

FRANCISCO TABADA, PETITIONER, VS. HONORABLE FRANCISCO ZANDUETA, JUDGE OF FIRST INSTANCE OF PANGASINAN, AND MOISES VERGARA, RESPONDENTS.

G.R. No. 24502. September 21, 1925

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

On June 11, 1925, Moises Vergara filed a protest with the Court of First Instance of Pangasinan against Francisco Tabada, wherein he prayed, among other things, that he (Moises Vergara) be declared and proclaimed elected as municipal president of Umingan, Pangasinan, instead of Francisco Tabada.

Under the date of June 20, 1925, the protestee, Francisco Tabada, filed a demurrer to the motion of protest on the ground that the lower court had no jurisdiction to entertain said protest, for the reason that the respondent did not allege in his motion of protest that he and the protestee were "registered and voted candidates," but simply "voted candidates, with certificates of candidacy."

After hearing the attorneys of both parties upon the demurrer, the Honorable Francisco Zanduetta, presiding judge of Branch II of the Court of First Instance of Pangasinan, on June 24, 1925, entered an order overruling the demurrer and ordering the protestee to answer the protest within the period prescribed by the rules of court.

Not satisfied with said order, the protestee, Francisco Tabada, filed a petition with this court for a writ of prohibition against the Honorable Francisco Zanduetta, Judge of First Instance of Pangasinan, and Moises Vergara, wherein he prays for judgment, declaring that the Court of First Instance, with the Honorable Francisco Zanduetta, presiding judge of Branch II thereof, has no jurisdiction to entertain and decide said protest, and ordering the issuance of a writ of prohibition addressed to the respondent judge or other judge of the Court of First Instance of said province, commanding him to refrain and abstain absolutely from trying said election contest and from taking any further proceeding, with the costs against the respondents.

The respondents filed a demurrer to this petition on the ground that it does not state facts sufficient to justify the issuance of the writ of prohibition.

The question raised by the demurrer and the arguments, written as well as oral, is whether or not the words "only candidates voted, with certificates of candidacy" employed in the motion of protest of the respondent Moises Vergara, are equivalent to the words "registered and voted candidates," and sufficient to give the Court of First Instance of Pangasinan jurisdiction to entertain and decide the contest in question.

This question was raised in the case, of a similar nature, of *Viola vs. Court of First Instance of Camarines Sur and Adolfo* (p. 849, ante), wherein the majority of this court said the following:

"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."

It was also intimated in the arguments that, as Francisco Tabada answered the motion of protest after the overruling of his demurrer by the court, said court acquired jurisdiction over his person by voluntary submission, and consequently over the protest also.

The court acquires jurisdiction over the person of the parties by the plaintiff's invocation of the exercise of its powers, and its assistance to compel the defendant to render him what is 'due him under the law, and by service of summons on, or voluntary submission of, the defendant (15 C. J., 798). The jurisdiction, whether general or special, over the subject-matter in litigation, is conferred by statute or the constitution, and is never acquired by consent or by submission of the parties. The requirement that the election protest be filed "by a registered candidate voted for" refers to the capacity to commence an election contest, as well as to the jurisdiction of the court to take cognizance of, and decide, said contest, and without this requisite no candidate may file any protest, nor any court take cognizance thereof. Inasmuch as in taking cognizance of election contests, the courts of first instance exercise special limited jurisdiction (Tengco vs. Jocson, 43 Phil., 715; Palisoc vs. Tamondong and Medina Cue, 43 Phil., 789; Viola vs. Court of First Instance of Camarines Sur and Adolfo, p. 849, ante), they cannot entertain an election contest, unless the facts, upon which the exercise of such jurisdiction depends, are pleaded; and as one of said essential requisites is that the contestant be a registered and voted candidate, such fact must be alleged in the motion of protest in order that the court may determine whether or not it has acquired jurisdiction to take cognizance of the contest. The mere submission of the protestee, who was a registered and voted candidate, does not give the court jurisdiction to take cognizance of the protest; nor does it acquire jurisdiction over his person by reason of such submission, unless it has jurisdiction over the subject-matter in litigation (15 C. J., p. 808, par. 104). The jurisdiction of the Court of First Instance of Pangasinan in election contests being, as it is, a special one, it did not acquire jurisdiction over the person of Francisco Tabada, notwithstanding that the latter had submitted to it, for it had not acquired jurisdiction before by the filing of the motion of protest, because the motion did not allege the essential facts giving it jurisdiction.

Since in the pleadings, as well as in the briefs, all the facts are stated and all the questions that are necessary for, and relevant to, the decision of the case on the merits discussed, we do not believe it necessary that any answer should be filed.

For all of the foregoing, we are of the opinion that the Honorable Francisco Zandueta, respondent, who presides over Branch II of the Court of First Instance of Pangasinan, has not acquired jurisdiction to try and decide the protest in question, and said judge or any other of the Court of First Instance of Pangasinan is ordered to refrain and absolutely abstain from taking any further proceeding in the election contest presented by Moises Vergara against Francisco Tabada, without costs. So ordered.

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

Villamor, J., with whom concur Avanceña, C. J., Street and Ostrand, JJ., dissenting: I dissent for the reasons set out in my dissenting opinion in the Viola case, (p. 849, ante), wherein the meaning of the allegation "only candidates voted, with certificates of candidacy" was discussed.

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