

CARLOS ORENCIA, PETITIONER, VS. HONORABLE EMILIO ARANETA DIAZ, JUDGE OF FIRST INSTANCE OF LA UNION, CALIXTO LLOREN, BASILIO HALOG AND BERNABE SUGUITAN, RESPONDENTS.

G.R. No. 24603. September 16, 1925

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The petitioner prays this court that a writ of mandamus may be issued addressed to the respondent judge, ordering him to set aside and annul the order entered by him dismissing the protest, to reinstate the same and continue taking cognizance thereof, to order the opening of the ballot boxes for their revision, and to permit him to amend the protest by specifying the essential facts and swearing to it, with the costs against the respondent.

The respondent filed a demurrer to the complaint on the ground that the facts therein set forth do not constitute a cause of action.

It appears from the allegations of the complaint: (a) That the petitioner filed a protest against the election of the respondent Calixto Lloren for the office of municipal president of Tubao, La Union, alleging certain grounds stated in paragraph 4 of his protest; (b) that the respondent Calixto Lloren filed two pleadings, (1) a demurrer and a motion for dismissal, and (2) an answer and counter-protest; (c) that on the day of the hearing of the protest, that is to say, July 9, 1925, the respondent Calixto Lloren verbally moved to withdraw his answer and counter-protest, which petition was granted by the court over the objection of the petitioner; (d) that on July 9, 1925, the respondent judge entered an order, dismissing the protest on the following grounds: (1) That the fundamental allegations thereof are deficient in that they do not state facts justifying the annulment of the election of the respondent or the alteration of the result of the election, and (2) that the protest is not sworn to.

The grounds alleged in paragraph 4 of the protest are:

"(a) That in precinct No. 1, the board of inspectors committed the following irregularities: (1) The ballots read and those not read were mixed up and on account of this mix-up it resulted that there were 56 ballots in question, which two inspectors wanted read or re-counted, but the chairman of the board refused to do so, and they were not read; (2) of the ballots rejected the petitioner has three votes in his favor which are clean ballots and which the board rejected; (3) they counted one vote in favor of the respondent Calixto Lloren, which is a ballot that was really marked or void; and (4) they gave one vote to the respondent Calixto Lloren in a ballot in which the names of Calixto Lloren is found in the space for the office of member of the provincial board.

"(b) That in precinct No. 2, the board of inspectors committed the following irregularities: (1) They suspended the meeting, which lasted 4 hours, during the canvassing; (2) after the canvass of the votes, Fabian Pangonil, leader and brother-in-law of the respondent Calixto Lloren, asked the board about the ballots rejected, and when they were shown to him, he selected five of them and caused the chairman of the board to read and count them, with the result that two of said ballots were votes in favor of the petitioner and three in favor of the respondent Lloren, which ballots are really void because they had already been rejected by the board; (3) they permitted the erasing in the tally sheet, as well as on the blackboard, of votes already noted, because it was so

ordered by the chairman on the ground of having read ballots different from those chosen.

"(c) That in precinct No. 3, the board of inspectors committed the following irregularities: (1) They suspended the meeting, which lasted 6 hours, during the canvassing, on account of a discussion about forty-seven ballots; (2) it was decided by the board not to read those forty-seven ballots and so it was made to appear in the minutes, and the same were kept in the box; later on the leaders of the respondent Lloren, Fabian Pangonil, Isabelo Llonas, present municipal president of Tubao, and Canuto Verceles, the latter two being watchers in precinct No. 4, suddenly appeared with knowledge of the defeat of Calixto Lloren in the other precincts which had already finished counting the votes, and asked the board to read the forty-seven ballots, which was denied by the chairman of the board, because the counting was already terminated and the ballots were then kept in the box; and in view of this refusal they talked to the inspectors, which lasted four hours approximately, and the latter, granting the request, took from the box the forty-seven ballots and read thirteen of with the following result: Five for Calixto Lloren, 5 for Bernabe Suguitan, 2 for Carlos Orenca, the petitioner herein, and 1 for Basilio Halog, which should have been annulled or rejected; (3) they gave one vote to Calixto Lloren in a ballot wherein the same name appears in the column for the office of president as well as in that of vice-president; (4) they rejected one vote in favor of the petitioner because in the corresponding ballot there appeared in the office of councilor the name of Maria Viduya, instead of considering it as Mariano Viduya, who is a candidate for councilor.

"(d) That in precinct No. 4, the board of inspectors committed the following irregularities: (1) They permitted Canuto Verceles, Isabelo Llonas, and Nicolas Oiler, watchers, to electioneer within the election precinct; (2) they gave one vote to respondent Lloren in a ballot which should have been annulled because the name of Calixto Lloren appears in the column for the office of president as well as in that of vice-president; (3) they failed to count 46 ballots which were clean in favor of the petitioner."

On July 9, 1925, the respondent judge, upon the motion of the protestee, entered the following order:

"Considering the motion for dismissal of the protest presented in this case, after examining the allegations thereof specially paragraph 4, wherein the grounds of the protest are set forth, and after Hearing the arguments of the attorneys for both parties, the court finds that the fundamental allegations of the protest are deficient in that they do not state facts essential to annulling the election of the respondent or altering the result of the election, and that the protest is not sworn to.

"Wherefore the motion to dismiss is sustained, with the costs against the contestant. So ordered.

"Given in open court in San Fernando, La Union, this 9th day of July, 1925."

The question now at issue is whether or not, notwithstanding the order of dismissal entered by the respondent judge in the exercise of his jurisdiction over the matter, the mandamus applied for should issue.

In the case of *De la Cruz vs. Revilla and Bustos* (40 Phil., 234), this court held.

"The decision of the Court of First Instance on a demurrer to a motion of protest in a municipal election contest is final and not appealable, and cannot be reviewed on an application for the writ of mandamus. The remedy of the protestant is to amend the motion of protest. The Supreme Court has no authority to substitute its judgment for the judgment of the Court of First Instance, however much it might, upon a consideration of the original motion of protest, differ from the conclusion of the lower court."

In the case now before us a municipal election protest was presented; to said protest a demurrer was filed on the ground that the facts therein set forth did not constitute sufficient cause for annulling the election of the respondent or altering the result of the election; and the court passed upon the demurrer, rendering the order of July 9, 1925, above mentioned. This being so, it seems to us inevitable that the doctrine laid down in the case of *De la Cruz vs. Revilla and Bustos*, supra, must be applied here.

The petitioner had the right to amend his protest, but when he applied to the court for permission to amend it, it was after the respondent judge had held that the facts alleged in the protest did not constitute sufficient cause for annulling the election of the respondent Lloren or altering the result of the election., In view thereof, if the petitioner is permitted to amend his protest, he would do so by alleging facts which were not specified in the original protest, and outside of the legal period for the filing of protests. May the contestant amend his protest outside of the two weeks after the proclamation of the result of the election?

In Valenzuela vs. Carlos and Lopez de Jesus (42 Phil., 428), the Supreme Court held: "A Court of First Instance will not be reversed for having permitted the contestee to amend his counter-protest three months after the contest had been begun, it appearing that no proof had at that time been taken by either party and that the taking of proof thereafter extended over a period of more than a year."

In Cailles vs. Gomez and Barbaza (42 Phil., 496), the court held: "In election contests, the motion of protest can only be amended within a reasonable time before the commencement of the trial, unless special reasons exist for permitting it after such period." In that decision, the following doctrine taken from 20 Corpus Juris, page 234, was cited: " 'Except in jurisdictions where election contests are governed by the general rules of chancery practice, the general rule is that the notice or pleadings cannot be amended so as to introduce new parties, or new grounds of contest, at least after the time for filing the original pleading or notice has expired; and this is especially true where no good reason is given for not presenting the new matter in the original pleading'"

And in Tengco vs. Jocson (43 Phil., 715), one of the questions raised has reference to the amendment of an election protest after the expiration of the period within which the original protest should be presented. This court decided this question in the negative, citing with approval the case of Gillespie vs. Dion (18 Mont., 183; 33 L. R. A., 703), wherein the court held: " * * * 'Doubtless, amendments may be made to a statement (protest) sufficiently good to enable the proceeding to be considered, provided such amendments do not essentially change the grounds of the contest, or set forth grounds where none were originally stated; but, where the amendments are so radical as to virtually initiate a contest where really no grounds at all had been specified in the original statement, we are inclined to hold they ought not to be permitted after the ten days allowed by law for commencing proceedings (the protest) have expired. A dissatisfied elector should be vigilant.'"

It follows from the doctrines laid down in the three cases just cited that the established jurisprudence of this court in connection with amendment of protest is that amendment of protest may be allowed when said amendment does not change essentially the grounds of the protest, and this may be done within a reasonable period before the beginning of the trial, unless there exist special reasons for making amendment after said period. But when the amendment is of such a nature that it virtually introduces new grounds not alleged in the original protest, said amendment must be presented within the period fixed by the law for the filing of protests. In view of the plain terms of the order of dismissal above-mentioned, we see no other way of amending the protest in question except by alleging new facts not expressed in the original protest, and this outside of the time given by the law for filing protest, which is not permissible.

For all of the foregoing, and adhering to the doctrine laid down in the case of De la Cruz vs. Revilla and Bustos, supra, we hereby hold that the mandamus applied for cannot be granted. The costs shall be taxed against the petitioner. So ordered.

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

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