

CARLOS VILLANUEVA, PETITIONER, VS. THE HONORABLE EMILIO ARANETA DIAZ, JUDGE ON DUTY OF THE COURT OF FIRST INSTANCE OF LA UNION, AND ARNULFO QUEZADA, RESPONDENTS.

G.R. No. 24627. September 16, 1925

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The purpose of this mandamus proceeding is to have an order issued by this court, directing the respondent judge of the Court of First Instance of La Union to reinstate the election protest presented by the petitioner against the other respondent, Quezada, who had been proclaimed as president elect of the municipality of Santo Tomas, La Union, and to determine, after the proper proceedings, the merits of said protest in accordance with law.

The petitioner alleges: (1) That on July 15, 1925, he filed a motion, contesting the election of the respondent as municipal president of the municipality of Santo Tomas, La Union; (2) that by order of the lower court, the contestant gave a bond on the 16th of the same month; (3) that on July 2, 1925, the respondent Quezada filed a general denial against the motion of protest; (4) that on July 13 of the same year, the respondent judge, upon the motion of the other respondent Quezada, dismissed the motion of protest; (5) that said order of dismissal is erroneous, illegal and against the law, for the very reason that the pleadings of record show that the motion of protest was presented within the time prescribed by the law; (6) that the petitioner has no other expedient and legal remedy in the ordinary course of law, except this mandamus proceeding.

To the foregoing complaint, the respondent filed a demurrer, alleging that the facts therein set forth do not constitute a cause of action, justifying the issuance by this court of the mandamus applied for.

It is a fact admitted by both parties in this proceeding that the respondent judge dismissed the protest in question on the ground that it was not alleged in the protest that the same was presented within the legal period, nor was any evidence presented of this fact.

In his order dated July 13, 1925, the respondent judge, among other things, says:

"When the case was called for trial, the attorney, for the protestant presented evidence about the certificate, Exhibit A, of the municipal board of canvassers stating the votes cast for municipal offices; about the certificate of candidacy of the protestant, Exhibit B; a certificate, Exhibit C, of the municipal secretary of Santo Tomas, giving the names of the candidates who had filed their respective certificates of candidacy for the different municipal offices of said municipality; the proclamation of those elected for the municipal offices of said municipality (Exhibit D); and the summons served upon the respondents by the sheriff (Exhibit E). After the introduction of this evidence the protestant rested, and the attorneys for the respondent Arnulfo Quezada moved for the dismissal of the case on the ground that the date of the filing of the protest was not proven, nor was the date when the bond was given, which facts are jurisdictional according to the protestee.

"The law provides that protests of this nature must be presented within two weeks after the proclamation of the candidates (sec. 479 of the Election Law, as amended); it says nothing about the giving of the bond (sec. 482

of the same law). An examination of the protest will show that there is not in it any allegation that it was presented within the legal period above mentioned, nor was any evidence introduced of this fact. About this contention of protestee's counsel, the attorney for the protestant argues that there appeared stamped on the motion of protest a mark which says 'Court of First Instance, Received June 15, 1925, San Fernando, La Union, P. I.' and this shows that this protest was presented on the date stated in said stamp. Upon this point the protestant has not shown who uses this stamp, nor was the clerk of this court presented to prove that it was he who received this protest on the date of June 15th of this year stated in said stamp. Nor is there in the protest any allegation that the same was filed within the legal period.

"In view of the absence of this proof, the court holds that the protestant has not proven the date of the filing of this protest, and this proof being a fact essential for this court to acquire jurisdiction in election contests, this protest is dismissed with the costs against the contestant."

As the question involves a ruling of the lower court in a municipal election contest wherein no appeal is allowed under the Election Law, the protestant has come to this court through a mandamus proceeding.

"It is a well recognized rule that where the performance of an official duty or act involves the exercise of judgment or discretion, the officer cannot ordinarily be controlled with respect to the particular action he will take in the matter; he can only be directed to act, leaving the matter as to what particular action he will take to his determination. * * * " (18 R. C. L., p. 124.)

But "if there is an arbitrary abuse of discretion, the courts recognize that this is an exception to the general rule, and mandamus may issue if there is no other adequate remedy, though the result is that the court is called upon to review the exercise of a discretionary power. As has been said in this connection it is not accurate to say that the writ will not issue to control discretion, for it is well settled that it may issue to correct an abuse of discretion, if the case is otherwise proper. * * * " (Id., p. 126.)

The reinstatement of a cause has been held to be the exercise of a judicial function not controllable by mandamus, an appeal generally lying where a justice has wrongfully dismissed an action. So, it has been ruled, the dismissal of proceedings for want of prosecution is discretionary with the court before which the proceedings are pending, and a writ of mandamus will not issue for the reinstatement thereof unless manifest injustice would otherwise result. Nor, it has been held, will mandamus lie to compel a court to reinstate a cause dismissed on the ground that the record brought up was not submitted in the form prescribed by the rules of court. On the other hand, it has been held that mandamus to compel the reinstatement of a case erroneously stricken from the docket may be issued to an inferior court by a supreme court in the exercise of its general power of superintending control, but no order will be made as to what decision the court shall render as to any question involved, or as to the course it shall pursue in disposing of the cause. Thus, it has been ruled, under its supervisory jurisdiction, an appellate court has the authority to instruct a court of original jurisdiction to reinstate a case dismissed on the ground and for the alleged reason that the court is without jurisdiction, if it be manifest that the court has jurisdiction, and the same power of general supervision over inferior courts will be exercised to compel the reinstatement and trial of a case, dismissed by the inferior court on the ground of insufficiency in the pleading, where no appeal is possible. Where the rights of a person beneficially interested in a suit would be prejudiced by a dismissal by the plaintiff of record, mandamus will lie to reinstate the case in the absence of another adequate remedy. (18 R. C. L., pp. 312-313, par. 256.)

In the case of *Nisperos vs. Araneta Diaz and Flores*, R. G. No. 24552, recently decided by this court (September 10, 1925, p. 806, ante) we have held, in the first place, that the time for filing a protest is a matter of judicial record and the lower court having said record under its control may determine by itself whether or not the protest was presented within the legal period, irrespective of any allegation that may be made in the protest relative to the time of the filing thereof; and secondly, that the omission of the allegation relative to the filing of the protest is not

necessarily fatal to the protestant, even under the doctrine laid down in *Ferrer vs. Gutierrez David and Lucot* (43 Phil., 795), for the courts must not, upon a mere technicality, shut their eyes to the reality. And in the body of the opinion in the *Nisperos* case, *supra*, we said:

" * * * What the law requires is that the protest should be filed with the court within the legal term. It having been, as it is admitted in the instant case by the respondent that the protest was presented within the legal period, there can be no sufficient ground for raising this question. If it is indisputable that the protest in question was presented to the court within the legal period, then this essential fact exists, which gives the court jurisdiction to try and decide said protest."

In the case of *Ancheta and Aguilar vs. Judge of First Instance of La Union and Verceles* (40 Phil., 73), these questions were raised: (a) Whether or not the bond was filed in due time; (b) whether or not the law authorized the judge to dismiss said protest; and (c) whether or not mandamus should issue to compel the respondent judge to reinstate said protest, and proceed to decide the questions at issue. This court, after examining sections 479 and 482 of the Administrative Code, rendered a *per curiam* decision, holding:

"While the law prohibits the court from entertaining a motion of protest in election cases, until the protestant gives a bond in amount to be fixed by it, the bond need not be given within the time fixed for filing the motion of protest. The bond may be given within a reasonable time after the amount is fixed by the court.

"After the court has acquired jurisdiction of an election protest by the presentation of the motion of protest within time and proper notice is given and the bond has been filed, it deprives the protestant of his right to be heard upon the merits of his cause by dismissing the protest and mandamus will issue to compel a reinstatement of the same and a hearing upon the merits."

In the case of *De Castro vs. Salas and Santiago* (34 Phil., 818), this court, in ordering and decreeing the issuance of the mandamus applied for, said:

"The respondents further argue that the Court of First Instance having jurisdiction in the premises to consider the questions presented by the petitioner in his 'motion,' it had jurisdiction to decide all of the questions presented. That contention is true if we limit his jurisdiction to hear and determine questions presented upon their merits. But when it is alleged that the court refused to consider the questions upon their merits and erroneously dismissed the action upon a construction of some question of law or of practice preliminary to a final hearing, we have an entirely different question presented. No rule of law is better established than the one that provides that mandamus will not issue to control the discretion of an officer or a court, when honestly exercised and when such power and authority is not abused. A distinction however must be made between a case where the writ of mandamus is sought to control the decision of a court upon the merits of the cause, and cases where the court has refused to go into the merits of the action, upon an erroneous view of the law or practice. If the court has erroneously dismissed an action upon a preliminary objection and upon an erroneous construction of the law, then mandamus is the proper remedy to compel it to reinstate the action and to proceed to hear it upon its merits. * * * "

Applying the doctrines cited in the case at bar, it seems to us clear that the respondent judge, in refusing to take cognizance of the protest in question, and dismissing it on the ground that the date of the filing of the same had not been proven, has committed an abuse of discretion in rejecting as evidence the stamp of the lower court marked on the same protest, indicating the date when the same was filed. The original protest filed in the clerk's office is a part of the court's record, and when it appears from said stamp of the court that it was presented within the legal period, there is every presumption in favor of the proposition that it was really presented within that period, and the party attacking said presumption has the burden of proof that the stamp of the lower court has been unduly marked on the protest. When from the record there appears "Court of First Instance, Received June 15, 1925, San Fernando, La Union," there is no need of requiring the protestant to present any further evidence of

this fact.

For all of the foregoing, it must be ordered and decreed that a writ be issued from this court ordering the respondent judge, the Honorable Emilio Araneta Diaz, to annul and set aside the order entered by him dismissing the motion of the protestant, to reinstate said case and to proceed with the trial thereof upon the merits and decide the same in accordance with law. No special finding as to costs is made. So ordered.

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

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