

TOMAS DE GUZMAN, PETITIONER, VS. PROVINCIAL BOARD OF CANVASSERS OF LA UNION AND JUAN T. LUCERO, RESPONDENTS.*G.R. No. 24721. November 03, 1925*

Ponente: VILLAMOR, J.

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This proceeding is for the purpose of having this court issue a mandamus addressed to the provincial board of canvassers of the Province of La Union, ordering it to meet and reject and annul all the votes adjudicated to the respondent Juan T. Lucero, and after correcting the election return, to proclaim and certify the petitioner elected for the office of provincial governor of La Union in accordance with law.

As ground of the petition, it is alleged that the respondent provincial board of canvassers met on June 22, 1925, for the purpose of counting the votes cast in the election for provincial officers and certifying the result of the count, and after gathering all the election returns, it found that the petitioner had obtained 7,662 votes and the respondent Juan T. Lucero 8,771 votes; that the original of the certificate of candidacy of the respondent Juan T. Lucero, a certified copy of which is Exhibit A, was not duly sworn to, as required by law, while the certificate of candidacy of the petitioner Tomas de Guzman, the original of which is Exhibit B, was prepared and filed in accordance with the requirements of the law; that notwithstanding that Juan T. Lucero did not file a certificate of candidacy duly sworn to, as provided in section 404 of the Election Law, the respondent provincial board of canvassers willfully and illegally adjudicated the 8,771 votes to the respondent, and afterwards illegally proclaimed and certified him as governor-elect of the Province of La Union; that in view of these facts the respondent Juan T. Lucero has not, and could not have, been a legal candidate for the office in question, and could not have been certified elected for the office of provincial governor.

To this complaint the respondent filed a demurrer on the ground: (a) That the court had no jurisdiction over the subject-matter in litigation; (b) that the court had no jurisdiction over the persons of the defendant members of the extinguished provincial board of canvassers of La Union; and (c) that the facts alleged in the complaint did not constitute a cause of action.

The question to be decided in this proceeding is whether or not the respondent has filed a certificate of candidacy in accordance with the law, and in case he has not, whether the writ applied for should be issued.

Section 41 of Act No. 3030, amending section 471 of the Election Law, provides that the provincial board of canvassers or the Governor-General, as the case may be, shall certify elected for the offices of senator or member of the House of Representatives and for provincial officers only those who shall have obtained the highest number of votes, and filed their certificates of candidacy in accordance with the provisions of section 404 of this law. And said section 404, as amended by section 3 of the same Act No. 3030, provides that no person shall be eligible for the office of senator, representative or any provincial office, unless within the time fixed by the law, he shall file a certificate of candidacy duly verified. The meaning of the phrase "a certificate of candidacy duly verified," is explained by this court in *Viola vs. Court of First Instance of Camarines Sur and Adolfo* (47 Phil., 849), to the

effect that " * * only when the corresponding receipt has been issued and the certificate filed can it be presumed that it has been duly verified and filed."

In the instant case, according to the allegations of the petitioner the respondent Juan T. Lucero filed his certificate of candidacy in the office of the secretary of the provincial board of La Union on April 15, 1925, the provincial secretary having issued the proper receipt for the filing of said certificate, together with a statement of the expenses attached thereto (Exhibit 2). It, therefore, seems clear that the respondent filed his certificate of candidacy in accordance with the Spanish text of section 404 of the Election Law, as amended by section 3 of Act No. 3030.

But the petitioner argues that section 404 of the Election Law, as amended by section 3 of Act No. 3030, is mandatory in its terms, and therefore must be complied with by the provincial board, respondent herein. Granting that the English text of the law in this case makes clear the Spanish text "Certificado de candidatura debidamente acreditado" (certificate of candidacy duly verified), it will be seen that said section 3 of Act No. 3030 requires the candidate to file a "certificate of candidacy duly verified," indicating by these two words that the certificate of candidacy must be sworn to. In the case before us the certificate of the respondent Juan T. Lucero was defective, lacking the formality of the oath. This irregularity might have justified the elimination of the name of Juan T. Lucero as a legal candidate for the office of provincial governor, if an objection on the part of the petitioner Tomas de Guzman had been made in due time. Yet we are of the opinion that this irregularity does not invalidate the election for the fundamental reason that after it was proven by the count of the votes that Juan T. Lucero had obtained the majority of the legal votes, the will of the people cannot be frustrated by a technicality consisting in that his certificate of candidacy had not been properly sworn to.

This court in the case of *Gardiner vs. Romulo* (26 Phil., 521), following authoritative decisions of the United States, which establish rules of interpretation of election laws, said;

"The provisions of the Election Law declaring that a certain irregularity in an election procedure is fatal to the validity of the ballot or of the returns, or when the purpose and spirit of the law would be plainly defeated by a substantial departure from the prescribed method, are mandatory.

"When the Election Law does not provide that a departure from a prescribed form will be fatal and such departure has been due to an honest mistake or misinterpretation of the Election Law on the part of him who was obligated to observe it, and such departure has not been used as a means for fraudulent practices or for the intimidation of voters, and it is clear that there has been a free and honest expression of the popular will, the law will be held directory and such departure will be considered a harmless irregularity."

And in *Lino Luna vs. Rodriguez* (39 Phil., 208), this court laid down the following doctrine:

"It has been announced in many decisions that the rules and regulations, for the conduct of elections, are mandatory before the election, but when it is sought to enforce them after the election, they are held to be directory only, if that is possible, especially where, if they are held to be mandatory, innocent voters will be deprived of their votes without any fault on their part. The various and numerous provisions of the Election Law were adopted to assist the voters in their participation in the affairs of the government and not to defeat that object. When the voters have honestly cast their ballots, the same should not be nullified simply because the officers appointed under the law to direct the election and guard the purity of the ballot have not done their duty. The law provides a remedy, by criminal action, against them. They should be prosecuted criminally, and the will of the honest voter, as expressed through his ballot, should be protected and upheld."

We hold that the legal provision here in question is mandatory and non-compliance therewith before the election would have been fatal to the recognition of the status of Juan T. Lucero as candidate. But after the people have expressed their will honestly, the result of the election cannot be defeated by the fact that the respondent who was

certified by the provincial secretary to be a legal candidate for the office of provincial governor, has not sworn to his certificate of candidacy. The situation is somewhat like that of a voter placing his ballot in the box. There are certain requirements of the law, affecting the vote, which have been considered by this court as of a mandatory character until the ballot is placed in the ballot box; but we have held that the validity of the count cannot be questioned, nor the vote stricken out after the ballots had been placed in the ballot boxes, simply for non-compliance with such provisions. After the termination of the election, public interest must be made to prevail over that of the defeated candidate, and we cannot declare that the election of the respondent Juan T. Lucero was illegal, and that he should quit the office for which he was elected, simply by reason of a defect in his certificate of candidacy, which defect could have been corrected before the election, but which cannot be cured after its termination, and after the result of the election was published by the provincial board of canvassers, respondent herein.

Of course the conclusion which we have arrived at tends to sustain the third ground of the demurrer of the respondent. We will not enter upon the discussion of the two first grounds of said demurrer, for it may be seen that they are clearly untenable.

The demurrer of the respondent is therefore sustained upon the third ground, and considering that in view of our ruling upon the only legal question raised in this proceeding, the complaint cannot be amended, this case is definitely adjudicated, and the writ of mandamus applied for is denied with the costs against the petitioner. So ordered.

Avanceña, C. J., Street, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.
Malcolm, J., concurs in the result.

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