

FEDERICO ELEAZAR ET AL., PETITIONERS, VS. HONORABLE FRANCISCO ZANDUETA, JUDGE OF FIRST INSTANCE OF PANGASINAN, ET AL., RESPONDENTS.*G.R. No. 24769, October 22, 1925*

Ponente: STREET, J.

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This is an original petition for the writ of certiorari whereby the petitioners, Federico Eleazar and the seven others, seek to be relieved from the effects of an order entered by Judge Francisco Zanduetta under date of August 4, 1925, in an election contest pending in the Court of First Instance of the Province of Pangasinan, whereby his Honor admitted the respondents Agustin Boñgolan and nine others as interveners in the contest mentioned, conditioned upon the execution by them of a bond in the amount of P500 to answer for costs in the cause. The respondents, having been cited by this court, interposed an answer, and the cause is here submitted for the determination of the issues thus presented.

It appears that on June 8, 1925, the municipal board of canvassers of the municipality of Urdaneta, Province of Pangasinan, proclaimed the election of the herein petitioners and six others as councillors for the municipality of Urdaneta for the current term, 1925-1928. On June 12, 1925, Joaquin Aagsalud, one of the defeated candidates for the office of councillor, started a contest over the election for the office mentioned, being civil case No. 4391, of the Court of First Instance of Pangasinan. In this motion of contest only the candidates proclaimed as elected by the municipal board of canvassers were named as protestees and impleaded, in conformity with the first paragraph of section 481 of the Election Law, as amended by Act No. 3210 of the Philippine Legislature. On June 18, 1925, a number of defeated candidates for the same office, who had not been made parties to the contest, namely, Agustin Bongolan and nine associates, appeared in the contest proceeding and filed therein a writing entitled "Motion of Protest, (Mocion Protesta)" in which they declared that they had been candidates for the office mentioned, "with certificates of candidacy duly registered" and alleged that they adhered to the motion of protest and asked the court to treat them as interested parties in the cause.

It appears that the Court of First Instance of Pangasinan consists of two salas, the first of which is presided over by Judge C. M. Villareal, and the second by Judge Francisco Zanduetta. When the matter of the contest first came before the court for consideration it was submitted in the first sala, before Judge Villareal. Upon this occasion Bongolan and his nine associates, whom we shall hereafter call interveners, filed another writing, called their "answer," dated July 8, 1925, in which they made certain allegations in the character of amendments to their previous motion. In this pleading the interveners joined issue with the allegations contained in the special defense which had been put in by the contestees, and it was alleged that in various named precincts of the municipality on election day votes were illegally taken away from the interveners and others and counted in favor of the protestees. The attorney for the protestees moved the court to strike both the motion and answer of the interveners, on the ground that the admission of the interveners as parties to the cause was unprecedented and improper and that the court had no jurisdiction to entertain said pleadings or to admit the interveners to the status of litigants in

any concept. Upon consideration of this motion, his Honor, Judge Villareal, came to the conclusion that the motion to strike interposed by the protestees was well founded; and he accordingly, on July 9, 1925, ordered the answer to be stricken from the file.

It further appears that there is a conventional rule adopted by the two judges and in force in the Court of First Instance of Pangasinan by which all election contests affecting any particular municipality of Pangasinan are assigned to the same sala, and if it occurs that there are more than one case from the same municipality they are all placed in the sala determined by the lowest number borne by any of the series. It appears further that at the time of the pendency of this protest there was another protest from the municipality of Urdaneta over the office of president, bearing a lower number than case No. 4391, and this lower number pertained to the second sala. As a consequence case No. 4391 was transferred, pursuant to the rule mentioned, to the second sala, thereby passing to the court of Judge Zandueta.

Upon the making of the order of July 9, 1925, by Judge Villareal, the interveners promptly filed a motion for reconsideration of the order, and this motion was not acted upon by Judge Villareal but came before Judge Zandueta, who, on August 4, 1925, reconsidered the order of Judge Villareal and permitted the two writings, namely, the motion protest and answer of the interveners, which had been impugned by the protestees, to stand; and he allowed the intervention, upon the making of a bond in the amount of P500 by the interveners to answer for costs. The protestees in turn asked for the reconsideration of this order but this motion was denied by Judge Francisco Zandueta on August 15, 1925; and on September 12, thereafter, the protestees presented this petition for the writ of certiorari to be relieved from Judge Zandueta's order.

The first point relied upon by the petitioners relates to the authority of Judge Zandueta to reconsider the order previously entered by Judge Villareal; and in this connection reliance is placed upon *Gabigao and Izquierdo vs. Del Rosario and Lim* (44 Phil., 182), and *Jerez vs. Wislizenus*, G. R. No. 22915,[1] wherein this court has declared that the judges presiding in the different branches of the Court of First Instance in districts having more than one branch have no authority upon their own motion to abrogate orders lawfully made in another branch in an action or proceeding properly assigned to the latter.

A moment's reflection will show that the doctrine above announced by this court has reference to the power of a court to act upon orders which are at the time pending before the judge of another sala. The situation involved in the present case involves no anomaly of this sort. In the case before us a cause that had been pending before the first branch of the court of Pangasinan was regularly transferred to the second branch. Judge Villareal was competent to exercise judicial authority in the matter so long as the case remained before him; and after it passed to the second branch Judge Zandueta had full power to act judicially upon any aspect of the case brought before him. If the contest had remained in the first branch Judge Villareal would have had power to reconsider and reverse his first order; and after the case passed to the second branch, Judge Zandueta had the same power. It cannot be pretended that by the transfer of the case the judicial power to act upon the motion of reconsideration had vanished. That power was vested in Judge Zandueta; and if Judge Villareal had attempted to pass upon this motion of reconsideration after the cause had passed to the branch of his associate there would have been just ground for the contention that action had been taken without power. It is quite obvious that there is no friction here between the judges of the two branches in Pangasinan, and we are of the opinion that Judge Zandueta acted in the matter with proper authority.

The second contention of the petitioners has relation to the right of the interveners to come into the case, and to the legal sufficiency of the writings called motion protest and answer of the interveners. As to the right of a defeated candidate for the office of councillor, who had not been impleaded in a contest over the office, to intervene therein, we are of the opinion that the point is determined by the express provision of law. In paragraph

5 of section 481 of the Election Law, as amended by section 27 of Act No. 3210, it is declared "The candidate whose election is contested and all other registered candidates voted for may reply thereto, * * *." It is true that in the proviso to the first paragraph of the same section it is provided that in contests over the office of councillor, "it shall be sufficient to summon the candidates proclaimed elected by the municipal board." But this does not mean that defeated candidates are thereby excluded from the right to intervene; and the fact that the defeated candidates are not required to be impleaded supplies the obvious explanation for the use of the expression "all other registered candidates voted for," which we have quoted from the fifth paragraph of the same section.

There can be no doubt, then, that the motion protest of June 18 gave the Court of First Instance jurisdiction to admit the interveners in the cause, and Judge Zandueta committed no error in recognizing their status as such upon the showing made in that writing. Nor did the circumstance that the "answer," so called, of the interveners was not filed within fifteen days after the filing of the motion of protest deprive the court of jurisdiction. In this connection it will be noted that the last mentioned writing was more than a mere appearance; it was truly an intervention, and though lacking in detail, it was capable of amendment. This was attempted in the answer; and it is noteworthy that there is a consistency between the two writings, in that they align the interveners with the contestees.

What has been said suffices to demonstrate that Judge Zandueta had jurisdiction to make the order which gave rise to this petition. It follows that this court should not interfere with what has been done by the writ of certiorari. Other considerations arise which appear to us to relate rather to the merit of the order complained of than to the jurisdiction of the court, but with this aspect of the case we have no concern, since we have no authority in this proceeding to entertain such considerations, and indeed we have no authority in a protest of this kind even to review the judgment or orders of the lower court upon appeal.

The petition will therefore be dismissed, and it is so ordered, with costs against the petitioners.

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

[1]Promulgated October 20, 1924, not reported.

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