

JEREMIAS YNUMERABLE ET AL., PETITIONERS, VS. HONORABLE ENRIQUE V. FILAMOR, JUDGE OF FIRST INSTANCE OF BATANGAS, ET AL., RESPONDENTS.*G.R. No. 24914. November 06, 1925*

Ponente: STREET, J.

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This is an original petition in this court for a writ of mandamus to compel the respondent judge to reinstate an election protest over the offices of vice-president and six councillors of the municipality of Lemery, Batangas, and to proceed to try the same on its merits. The respondents, having been required to show cause in usual course, have answered, and the cause is now before us upon the issue thus presented.

It appears that after the general election in June of the current year, the respondents herein, except Judge Filamor, were declared elected respectively to the offices of president, vice-president and ten councillors in the municipality of Lemery, Batangas. Within due time thereafter a contest was instituted over said offices by Ruperto Venturanza, as contestant for the office of president, Jeremias Ynumerable, as contestant for the office of vice-president, and the six other petitioners herein as contestants for the office of councillor. In this proceeding the persons elected to said offices were named as contestees. In due time thereafter a bond was given for the expenses and costs in the amount of P3,500, as fixed by the respondent judge. Said bond was expressed in the following terms:

"A contest having been presented by Ruperto Venturanza, Jeremias Ynumerable, Julian Malabanan, Gregorio Marquez, Ildefonso Marasigan, Dalmacio Mortel, Marcelo Villamin and Emiliano de la Luna against the election of Vicente Makabuhay, Rufino Pisigan, Zacarias Marasigan, Urbano Lota, Vicente Montenegro, Cornelio Morales, Marcos Catibog, Juan Mayuga, Jose Baldoza, Leoncio Noble, Valentin Mulintapang and Aniceto Makabuhay, for the offices of municipal president, vice-president and councillors of the municipality of Lemery, Province of Batangas, and a bond having been fixed by the court in the amount of three thousand and five hundred pesos (P3,500), Philippine currency, for the admission of said contest:

"Now, therefore, we, Ruperto Venturanza, as principal obligor, and Fulgencio Reyes, Segundo Maranan, Juan Diomampo and Ramon Atienza, all of the municipality of Lemery, Province of Batangas, jointly and severally hereby obligate ourselves to pay the expenses and other incidental costs that may be incurred on account of said contest up to the amount of three thousand and five hundred pesos (P3,500)."

This bond was signed by Ruperto Venturanza, as principal, and by the four mentioned therein as bondsmen. It will be noted that the names of none of the contestants, except Ruperto Venturanza, appears signed as principal obligors therein. Nevertheless the bond was approved by the court; and after an appropriate order had been made for the prosecution of the contest, the cause proceeded with the usual incidents, not omitting a motion of counterprotest instituted in due form by the contestees.

After a committee had been appointed for the review of the ballots, the boxes were opened and votes counted,

with the result, so the petition alleges, that the petitioner Ynumerable appeared to have been elected to the office claimed by him as probably also others of the contestants to the office of councillors. The protest being thus brought to the stage where it was ready for final determination by the court, the contestees raised a question before the court as to the sufficiency of the bond as regards Ynumerable and the contestants for the office of councillor. Upon this point it was urged that no bond had ever been given by said contestants and that therefore the court lacked the jurisdiction to proceed with the contest as regards to them.

In an order of October 7, 1925, his Honor, the respondent judge, acceded to this contention and dismissed the protest with respect to Ynumerable and the six contestants for the office of councillor. Against this action of the court, the contestants affected by the order interposed a motion for reconsideration, and asked leave of the court to permit said contestants to file an amended bond, which they offered to do. Both these petitions being denied, relief was sought in the present proceeding for a writ of mandamus.

We are of the opinion that his Honor was in error, both as to the supposed insufficiency of the bond and as to the effect of the supposed irregularity on the contest. It is established doctrine in this court that the giving of the bond in an election protest is not jurisdictional; and, furthermore, that where an insufficient bond is given, the contestant has a right to submit a sufficient bond within a reasonable time, to be fixed by the court, before the contest can be dismissed. (*Lucero vs. De Guzman*, 45 Phil., 852.) In the bond before us the preamble recites that a contest had been instituted by the parties-contestant, naming them; and it will be noted that this was a joint contest, consisting of a single proceeding against the officers-elect named as contestees. Though all of the contestants were not named as principal obligors, it must be considered that this bond was submitted in behalf of all of them and that it inured to their benefit. It is undeniable that the principal and bondsmen named in this bond would be liable thereunder for all of the lawful expenses and costs that might be taxed under section 482 of the Election Law, as amended by section 28 of Act No. 3210. The purpose of the law is to secure the obligation to pay the lawful expenses and costs, and this being secured, the purpose of the law is accomplished.

As for the contestants who are not named as principals in the bond, they are of course liable under the express provision of law, without the necessity of any bond, and there is nothing in the suggestion that the omission of the names of certain of the contestants relieves them from legal liability. Neither can the bond be declared ineffective because no persons are specifically named therein as obligees. The law intends that the successful party who has paid expenses and costs shall have a right to collect them, and the bond is a valid obligation in favor of such successful party, to be determined by the issue of the contest. There is therefore no necessity for a new bond so long as the obligors named in this bond remain solvent for the amount named.

It follows that the writ of mandamus must be issued as prayed, requiring the respondent judge to proceed with the determination of the contest as regards the petitioners herein, regardless of his order of October 7, 1925, and enter judgment therein on the merits according to law. The costs will be paid by the respondents who are contestees.

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

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