

ELEUTERIO DEANANEAS, PETITIONER, VS. HON. IGNACIO MAN-GOSING, JUDGE OF THE COURT OF FIRST INSTANCE OF SAMAR, BRANCH III, AND IGNACIA MUNCADA, RESPONDENTS.

G.R. No. 27550. November 25, 1967

Ponente: ZALDIVAR, J.

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ZALDIVAR, J.:

In the general elections held on November 12, 1963, petitioner Eleuterio Deananeas and respondent Ignacia Muncada were candidates for the office of vice-mayor in the municipality of Laoang, Samar. On November 27, 1963, petitioner was proclaimed elected vice-mayor of Laoang by the municipal board of canvassers of said municipality.

In due time, or on November 29, 1963, respondent Ignacia Muncada filed a motion of protest in the Court of First Instance of Samar, presided by respondent Judge Ignacio Mangosing, contesting the election of petitioner. The election protest was docketed as Election Case No. 332 of said court. After due hearing the respondent Judge rendered a decision, dated March 2, 1967, finding that respondent Ignacia Muncada had obtained 2,688 votes as against the petitioner who had obtained 2,673 votes, thereby declaring said respondent the duly elected vice-mayor of Laoang with a plurality of 15 votes over the petitioner.

The decision of respondent Judge dwelt only on the appreciation of ballots.

On March 6, 1967, counsel for the petitioner, having learned about the decision of respondent Judge and even before he received a formal notice of the decision,[1] filed an urgent motion for leave to examine certain ballots preparatory to the filing of his motion for reconsideration. Said motion to examine the ballots was granted by respondent Judge on March 7, 1967. On March 10, 1967, counsel for the petitioner filed a motion to set aside the judgment upon two grounds, namely, (1) that no sufficient basis had been furnished by protestant (now respondent Muncada) for the determination of the outcome of the election contest in view of her failure to introduce in evidence the election returns from 14 precincts; and (2) that some 58 ballots were improperly counted by respondent Judge as valid votes for herein respondent, consisting of 41 ballots where only the word "Asyang" (admittedly the nickname of respondent Ignacia Muncada), not accompanied by either the Christian name or the sur-name of said respondent, was written in the space for vice-mayor;[2] and 17 ballots where the name voted for vice-mayor is "A. Muncada", which was not the name of the respondent Ignacia Muncada because there was a candidate for municipal councilor by the name of Alfredo Muncada.[3]

On April 20, 1967, the respondent Judge denied petitioner's motion to set aside the judgment. On that same day, April 20, 1967, counsel for petitioner filed a notice of appeal, stating that the petitioner "makes it known that he appeals to the Supreme Court on questions of law alone from the decision rendered against him by the Honorable Court dated March 2, 1967." [4] Likewise, on that same day, April 20, 1967, counsel for the petitioner filed a motion to fix the appeal bond.

On April 22, 1967, the respondent Judge issued an order denying the motion to fix the appeal bond and declaring

that the appeal filed by the petitioner could not be given due course, upon the ground that Section 178 of the Revised Election Code does not provide for an appeal in an election contest involving the office of vice-mayor, and that the decision had already become final. Respondent Judge further declared that the appeal to the Supreme Court was not in order because it would involve questions of law and fact. After the issuance of this order, respondent Ignacia Muncada assumed office as vice-mayor of Laoang, Samar.

On May 16, 1967, petitioner filed before this Court a petition for mandamus with preliminary injunction, praying that respondent Judge Ignacio Mangosing be ordered to give due course to the appeal from the decision of March 2, 1967 in Election Case No. 332 of the Court of First Instance of Samar to the Supreme Court on questions of law and to fix the appeal bond, and that a writ of preliminary injunction be issued stopping and preventing respondent Ignacia Muncada from assuming and exercising the functions of the office of vice-mayor of Laoang, Samar, during the pendency of this case. This Court gave due course to the petition for mandamus, but deferred action on the prayer for preliminary injunction until the case is decided on the merits.

The principal issue to be resolved in the present case is whether, or not, petitioner has a right to appeal to the Supreme Court from the decision of respondent Judge in Election Case No. 332 of the Court of First Instance of Samar; and, if petitioner has such right, whether, or not, respondent Judge had unlawfully excluded petitioner from the use and enjoyment of said right.

We find that respondent Judge is in error when he denied to fix the appeal bond and refused to give due course to the appeal filed by the petitioner. While it is true that under Section 178 of the Revised Election Code, which provides for appeal from the decision in election contests, there is no mention about appeal from a decision rendered by the court of first instance in an election contest involving the office of vice-mayor, it is now a settled rule that the decision of the court of first instance in election contests involving the office of vice-mayor (and also of municipal councilor) can be appealed to the Supreme Court on questions of law (*Mar-quez v. Prodigalidad*, 83 Phil., 813; *Calano v. Cruz*, 94 Phil., 231; *Tumakay v. Orbiso*, 97 Phil., 431; and *Sarmien-to v. Quemado*, L-18027, June 29, 1962).

The record shows that petitioner filed his notice of appeal in due time, and he made it clear in his notice of appeal that he was appealing from the decision of the respondent Judge to the Supreme Court on questions of law alone. It is also shown that petitioner wanted to file the appeal bond as required by law, because on the same day that he filed his notice of appeal he asked the respondent Judge to fix the appeal bond. Under the circumstances, We believe that respondent Judge had no discretion whether to give, or not to give, due course to the appeal of petitioner to the Supreme Court. The reason of respondent Judge in denying the motion to fix the appeal bond and in refusing to give due course to the appeal was that the appeal would involve both questions of fact and of law, and as such the appeal to the Supreme Court was not in order. The fact, however, as We have adverted to, was that petitioner had clearly stated in his notice of appeal that he was appealing to the Supreme Court on purely questions of law. That statement of petitioner in his notice of appeal - which was filed on time - serves as the basis of his right to have his appeal to the Supreme Court given due course by the respondent Judge. It is not for the trial judge to determine the nature of the issues that would be raised by the appealing party in his appeal to the appellate court. It is not for the trial judge to control the issues that would be raised, or could be raised, by the appellant in his appeal before the Supreme Court. Rather, it is the Supreme Court, and the Supreme Court alone, that will determine whether, or not, the appeal brought before it involves purely questions of law, as announced in the notice of appeal. Once this Court finds that the issue involved in the appeal before it, coming directly from the trial court, relates to questions of fact, or to mixed questions of fact and law, this Court will necessarily dismiss the appeal or remand the appeal to the Court of Appeals as the case may be.

In view of the foregoing, We declare that it was incumbent upon the respondent Judge to give due course to the

appeal filed by petitioner from his decision of March 2, 1967 in Election Case No. 332 of the Court of First Instance of Samar. We find, however, that the circumstances of the present case, as shown in the record, do not fully warrant the issuance of the writ of preli-minary injunction prayed for by the petitioner.

WHEREFORE, the writ of mandamus prayed for by the petitioner should be, as it is hereby granted; and respondent Judge Ignacio Mangosing, or whoever is the Judge presiding the branch of the Court of First Instance of Samar where Election Case No. 332 is assigned, is hereby ordered to give due course to the appeal filed by peti-tioner Eleuterio Deananeas from the decision in said Election Case No. 332, and to fix the appeal bond therefor. Without costs.

IT IS SO ORDERED.

Dizon, Acting C.J., Makalintal, Bengzon, Sanchez, Castro, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., and Reyes, J.B.L., J., on official leave of absence.

[1] The decision was sent to counsel for the petitioner by registered mail on March 4, 1967, and was actually received by him on March 15, 1967.

[2] Invoking in this connection the rulings of the Su-preme Court in the cases of Felisilda v. Achacoso, L-21228, November 22, 1963; and Gadon v. Gadon, L-20015, November 30, 1963.

[3] Invoking in this connection the ruling of the Su-preme Court in the case of Calo v. Court of Appeals, et al., L-21256, September 30, 1963.

[4] As quoted from the notice of appeal. Emphasis supplied.

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