

PEDRO SALDAÑA, PETITIONER AND APPELLANT, VS. CRISPULO CONSUNJI ET AL., RESPONDENTS AND APPELLEES.

G.R. No. 30173. December 14, 1928

Ponente: VILLA-REAL J.

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VILLA-REAL J.:

This appeal was taken by the protestant Pedro Saldaña from an order of the Court of First Instance of Bataan dismissing the protest upon motion of protestee Crispulo Consunji on the ground of not having acquired jurisdiction to try the case, because it was not alleged in the motion of protest that there was any proclamation of an elected candidate.

Appellant assigns the following alleged errors as committed by the lower court in its order, to wit: "The lower court erred in dismissing the protest; in refusing to admit the petitioner's amendment to his motion of protest, dated June 18, 1928; and in sentencing the protestant-appellant to pay the costs."

The pertinent facts necessary to decide the questions raised in the present appeal, are as follows:

On June 18, 1928, the protestant and appellant Pedro Saldaña filed the following motion of protest:

"Comes now the protestant, and as causes of protest against the election of protestee Crispulo Consunji to the court respectfully shows:

"1. Crispulo Consunji, Pedro Saldaña, Dionisio Tolentino and Diosdado Valenzuela presented their certificates of candidacy, in accordance with the law, for the office of municipal president of the municipality of Samal, Bataan, and were voted for at the elections held on June 5, 1928, as follows:

Vote:

Crispulo Consunji	269
Pedro Saldaña	255
Dionisio Tolentino	180
Diosdado Valenzuela	144

"2. In election precincts Nos. 1, 2, and 3, of the municipality of Samal, Bataan, over fifty (50) ballots bearing the name of the protestant were rejected and not counted by the election inspectors in his favor.

"3. In every election precinct of the municipality of Samal, Bataan, ballots bearing the protestant's name in a number sufficient to change the results of the election, were rejected and not counted in his favor.

"4. The election inspectors read and counted in favor of the protestee enough ballots to change the results of the election, which bore the protestant's name.

"5. The protestee's leaders electioneered during the voting both inside and outside of the polling place.

"Wherefore the protestant respectfully prays this Honorable Court to immediately order the ballot boxes of the

municipality of Samal, Bataan, to be forwarded to it, and after the necessary proceedings, to direct the proper board of canvassers to correct the election returns and proclaim the protestant elected to the municipal presidency of the municipality of Samal, Bataan, with costs against the protestee.

"He also prays for such other remedy as may be just.

"Samal, Bataan, this 18th day of June of 1928.

"PEDRO SALDAÑA

"I, Pedro Saldaña, do hereby declare that I am the protestant in the present motion of protest, and that I have read and acquainted myself fully with its contents, and I state that they are true and correct to the best of my knowledge and belief.

"PEDRO SALDAÑA

"Subscribed and sworn to before me this 18th day of June 1928; the declarant exhibited me his cedula No. F2192709, issued at Samal, Bataan, on April 28, 1928.

"C. M. BITUIN

"Clerk of Court"

On July 2, 1928, the protestee and appellee Crispulo Consunji entered a special appearance and moved for the dismissal of the protest on the ground that the Court of First Instance of Bataan, in which the motion of protest had been filed, had not acquired jurisdiction to try and decide it, because the same did not allege that there had been any proclamation of an elected candidate.

On July 12, 1928, said protestant and appellant filed a motion praying that he be permitted to amend his original motion of protest dated June 18, 1928, so as to add the following: "On June 6, 1928, the municipal council of Samal, Bataan, acting as municipal board of canvassers, declared and proclaimed the protestee Crispulo Consunji elected as municipal president of said municipality of Samal, Bataan, P. I."

The protestee and appellee objected to the foregoing motion to amend on the ground that the proposed amendment dealt with the introduction of an essential allegation and its admission would be equivalent to permitting a new protest to be filed beyond the time fixed by law.

The trial court passing upon both the motion to dismiss and the motion to amend, entered the appealed order already referred to.

Section 479 of the Administrative Code, as lastly amended by Act No. 3387, reads as follows:

"SEC. 479. Contested election to office in general.—Contests in all elections for the determination of which provision has not been made otherwise shall be heard by the Court of First Instance having jurisdiction in the judicial district in which the election was held, upon motion by any candidate voted for at such election and who has duly filed his certificate of candidacy. The contest shall be filed with the court within two weeks after the proclamation.

It will be seen that said legal provision requires that the protest be filed within two weeks after the proclamation. It is therefore indispensable to have a previous proclamation of an elected candidate in order that an election protest may be filed against said candidate, not only because without such an act there can be no legally elected candidate, but also because it cannot be known at what time the period for the presentation of said protest begins to run.

In order that a Court of First Instance may exercise jurisdiction over an election contest, it is necessary that it first

determine whether or not it acquired jurisdiction over it. To do so, it must examine the motion of protest for the purpose of finding out whether it contains all the essential and formal requisites provided by law for acquiring jurisdiction. The mere presentation of a motion to that effect is not sufficient. It is imperative that the same contain the essential facts to confer jurisdiction upon it, so that in view thereof the court may determine whether or not it acquired it. Since it is indispensable for the filing of a motion of protest, that there should be a proclamation of an elected candidate such fact must appear in said motion.

In the election contest of Ferrer vs. Gutierrez David and Lucot (43 Phil., 795), cited also in the election contest of Yumul vs. Palma, G. R. No. 30174,[1] recently decided, this court laid down the following doctrine:

"2. ID.; FACTS ESSENTIAL TO CONFER ON A COURT JURISDICTION TO TAKE COGNIZANCE OF AN ELECTION CONTEST.—Sections 44 and 45 of Act No. 3030, amending sections 479 and 481 of the Election Law, and referring to contested elections for any office in general and the procedure for such cases in court, show the essential facts that confer jurisdiction upon the court to hear and determine such kinds of causes, to wit: (a) That the protestant has duly registered his candidacy and received votes in the election (Tengco vs. Jocson, 43 Phil., 715); (b) that the protestee has been proclaimed elected in said election (Manalo vs. Sevilla, 24 Phil., 609); (c) that the motion of protest be filed within two weeks after such proclamation (Navarro vs. Veloso, 23 Phil., 625; Manalo vs. Sevilla, supra; Hontiveros vs. Altavas, 39 Phil., 226); (d) that all the candidates registered and voted in the election were properly notified of the protest within twenty days following its filing; (e) that the notice be served by the sheriff or his deputy in the manner prescribed by the law, failing which, that the notice be published in a paper of general circulation in the locality or by notices posted in conspicuous places of the town as may have been ordered by the court.

"3. ID.; SUFFICIENCY OF PROTEST.—As regards the Protestant, an election protest is sufficient if the facts enumerated in clauses (a), (b), and (c) of the preceding paragraph are alleged."

While it is true that from the motion of protest quoted above it appears that the general election wherein both the protestant and protestee were candidates for the office of municipal president of Samal, Bataan, was held on June 5, 1928, and that said motion of protest was presented on June 18, 1928, or thirteen days thereafter, since it does not appear from said motion of protest that there was a proclamation of an elected candidate after said election, the trial court could not, with only the aforesaid motion to judge from, know whether or not it had acquired jurisdiction to try it. Inasmuch as the facts which confer special jurisdiction are not presumed but must clearly appear in the motion, the trial court could not have acquired jurisdiction. (Tengco vs. Jocson, 43 Phil., 715; Viola vs. Court of First Instance of Camarines Sur and Adolfo, 47 Phil., 849.)

It is true that a motion to amend was presented for the purpose of remedying the defect, but it was done 36 days after the proclamation, which took place, according to said motion, on June 6, 1928, outside the period of two weeks fixed by the law for the filing of an election protest. As the trial court did not acquire jurisdiction by virtue of the original motion of protest, due to the lack of allegation therein of a proclamation of an elected candidate, which is one of the essential facts to confer jurisdiction on the court, the amendment remedying said jurisdictional defect, made after the period fixed by the law for the filing of an election protest, cannot confer jurisdiction on said court, inasmuch as the latter acquires jurisdiction only by the filing of said protest within said time with the allegation of all the essential facts of a jurisdictional character.

In the case of Tengco vs. Jocson (43 Phil., 715), this court laid down the following doctrine:

"AMENDMENT OF 'MOTION OF PROTEST,' ALLEGING JURISDICTIONAL FACTS AFTER EXPIRATION OF TIME FOR PRESENTATION OF ORIGINAL MOTION.—Amendments to a 'motion of protest' in election contest cases, to enable the proceedings to be considered, may be made, provided such amendments do not essentially change the grounds of the contest, or set forth grounds where none were

originally stated; but where the amendments are so radical as to virtually initiate a contest where really no grounds at all had been alleged in the original motion of protest, they will not be permitted after the time allowed by law for the presentation of the original motion of protest. A dissatisfied candidate must be diligent. A motion of protest in election contest which fails to allege protestant's qualifications to maintain the proceedings, cannot be amended to supply the omission after the lapse of the time which the statute allows for the commencement of the proceedings. The requirements of section 44 of Act No. 3030 are jurisdictional."

In view of the foregoing and of the repeated decisions of this court, we are of opinion, and so hold, that since the existence of a proclamation of an elected candidate is an essential fact of a jurisdictional character, the same must appear in the motion of protest, otherwise the court in which the motion is filed does not acquire jurisdiction to try the case and such defect cannot be cured by a motion of amendment filed after the lapse of the period fixed by the law for the filing of an election protest.

By virtue whereof, the order appealed from is affirmed, with costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Malcolm, Villamor, Ostrand, and Romualdez JJ., concur.

[1] Page 412, ante.

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