

THE BOARD OF ELECTION INSPECTORS FOR THE SECOND PRECINCT OF BOÑGABON, MINDORO (REPRESENTED BY A MAJORITY CONSISTING OF JOSE AGUILAR, CHAIRMAN, AND DEMETRIO CASAPAO, INSPECTOR), ...

G. R. No. 35773. August 06, 1931

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

This is an original petition for a writ of mandamus against the Judge of the Court of First Instance of Mindoro requiring him to proceed with the hearing of the petition filed by the two election inspectors of precinct No. 2 of the municipality of Boñgabon, taking all the relevant evidence of the case and deciding it upon the merits, and for a preliminary mandatory injunction against the provincial board of canvassers of that province requiring them to abstain from making the canvass with only the incomplete inspectors' statement, but to take into account the four copies of said statement, or the amended statement as authorized by the court below.

This case was argued by the parties together with that which is the subject matter of our decision in G. R. No. 35800 [1]; but, for the sake of greater clearness, we prefer to render a separate decision.

After the court below had ruled upon the inspectors' petition to correct the election returns of that precinct forwarded to the provincial treasurer, and before the bill of exceptions had been filed, the petitioners instituted these mandamus proceedings.

Although the petitioners affirm in their printed argument that the answer of the provincial board of canvassers admits all the facts alleged in the petition, the amended answer of the respondents herein, the judge of the Court of First Instance and others, deny the facts set out in the petition for mandamus, with the exception of those expressly or impliedly admitted therein, and in addition, set up certain special defenses. But since no evidence was adduced to prove the petitioners' allegations which were denied by the respondents, the present discussion may be limited to the points of law raised by the petitioners, to wit:

May the Judge of the Court of First Instance of Mindoro be compelled by mandamus to decide the election inspectors' petition to correct their returns a certain way, under section 465 of the Election Law?

Will a prohibitory injunction lie to compel the provincial board of canvassers of Mindoro to refrain from making the canvass without taking into account all four of the copies of the returns, or the amended returns as authorized by the lower court?

In view of the decision in case G. R. No. 35800, we shall now decide these questions, taking for granted the lower court's denial of the petitioners' prayer to amend the election returns forwarded to the provincial treasurer.

With respect to the mandamus against the court below, the matter may be decided in accordance with the court's opinion as expressed in the aforementioned case G. R. No. 35800 regarding the petition for the correction of the election returns. That is to say, if the Judge of the Court of First Instance of Mindoro, by virtue of the last clause

of section 465 of the Election Law, may grant or deny a petition to correct election returns, the writ of mandamus applied for will not lie.

The clause of section 465 of the Election Law, relevant to the point in question provides the following:

"After the said proclamation, no changes or amendments shall be made by the board of inspectors in such certificates of votes, unless so ordered by a competent court."

It is clear from the terms of this provision that the judge of the Court of First Instance may order the correction of returns, when so prayed for by the election inspectors, but there is nothing in the law to indicate that the judge must of necessity order such correction. As we held in case G. R. No. 35800, recently decided, "The power to order the correction of election returns, vested by law in the courts, is discretionary; it is an administrative and supervisory power intended to secure correctness in the amendment of such returns. Rulings made in pursuance of this power, granting or denying the petition to correct, are interlocutory in nature." This being so, the respondent judge cannot be compelled to use his discretion to decide a certain way, admitting evidence upon the incident in order to decide the same upon its merits. The record shows that in order to resolve the petition for authority to correct the election returns in question, the respondent judge heard both parties and took into account their pleadings and the exhibits attached both to the petition and to the objection thereto interposed by the intervenor, Juan Navarro. We believe that within the limits of that summary proceeding, the respondent judge had everything before him needed for the use of his sound discretion, deciding that there was no merit in the petition, and therefore he denied it.

This court has recently ruled that the lower court's denial of the protestants' petition is unappealable. To grant the petition now, compelling the respondent judge to admit evidence regarding the incident and to decide the same upon its merits, would be equivalent to authorizing a dilatory proceeding contrary to the summary nature of the aforesaid incident and to the policy of the law in requiring that the proclamation of the election results with reference to provincial and insular officials be made within thirty days following the election.

It is contended that the respondent judge erred in applying to the present case the doctrine laid down by the majority of this court in *Benitez vs. Paredes and Dizon* (52 Phil., 1). Assuming the respondent judge did err in this point, we are of the opinion that such an error cannot be corrected by mandamus. In that case the majority of the court held that the consent of the inspectors to the correction was necessary in order that the court might grant the authority requested. It is now argued that the two plaintiff-inspectors, composing the majority of the board, may ask for the correction of the returns in question, disregarding the other inspector who took no part in the preparation of said returns. We believe the majority of the board may petition the court for authority to correct the returns without the consent of the other inspector, if the latter does not object. But in the case before us, the third inspector, according to intervenor Navarro, objects to the correction of the returns on the ground that the two inspectors of the majority party committed irregularities in the preparation of the inspectors statements in that precinct, by including therein an arbitrary number of votes for the office of provincial governor. This necessarily demands the production of evidence. And inasmuch as, according to the respondent, the other election returns will not be sufficient, for they also contain an arbitrary number of votes for the office of provincial governor, recourse would have to be had to the ballot boxes for an examination of the ballots, and the incident would thereby be converted into a real election contest.

The petitioners cite in support of their contention the cases of *De Castro vs. Salas and Santiago* (34 Phil., 813) and *Galang vs. Miranda and De Leon* (35 Phil., 269, and 36 Phil., 316). The doctrines laid down in these cases are, however, inapplicable to the present issue. The cases cited dealt with the dismissal of a protest without discussing the merits. The ruling in these cases is: If a judge dismisses an election contest upon purely technical grounds, which do not affect the merits of the case or the jurisdiction of the court, mandamus will lie to compel him to

reinstate the case and decide it upon its merits. The present case does not deal with an election contest, but merely an incident, requesting authority to correct certain election returns. The decision of this incident is not a final decision upon the number of votes obtained by the candidates for the office of provincial governor. This question must be decided by an election contest. And the court below having acted within its discretionary powers in ruling upon that incident, mandamus will not lie. The general rule should here be followed, that mandamus will not issue to control the discretion of an officer or a court, exercised honorably and without abuse thereof.

In conclusion, therefore, the writ of mandamus prayed for against the Judge of the Court of First Instance of Mindoro will not lie.

With regard to the mandatory injunction prayed for against the provincial board of canvassers of that province, requiring them to refrain from considering the election returns forwarded to the provincial treasurer, but to consider in their canvass the copies of the returns forwarded to the Executive Bureau and the municipal treasurer of the municipality of Boñgabon, or the returns as corrected by order of the court, suffice it to bear in mind the provisions of section 469 of the Election Law. According to this section, it is a ministerial duty of said provincial board of canvassers to examine all the statements sent to the provincial treasurer, and the court having denied the petition for the correction of the returns sent to the provincial treasurer (G. R. No. 35800), said provincial board of canvassers cannot be compelled to take into account the copies of the election returns forwarded to the municipal treasurer of Boñgabon and to the chief of the Executive Bureau.

The petition is dismissed with costs against the petitioners, without prejudice to their right to raise before the trial court within the proper election contest, the question of the number of votes cast for the office of provincial governor in precinct No. 2 of the municipality of Boñgabon. And by virtue hereof, the writ of preliminary injunction issued by this court on the 27th of June, 1931, against the provincial board of canvassers of Mindoro is hereby vacated, and immediately after the promulgation of this decision said board is ordered to meet and make recount of all the votes cast for the office of provincial governor of Mindoro, and to make the proper proclamation. So ordered.

Street, and Malcolm, JJ., concur.

AVANCEÑA, C. J.:

I concur in the result.

JOHNSON, J.:

I reserve my vote.

IMPERIAL, J.:

I concur in the dismissal of the petition.

[1] Aguilar and Casapao vs. Navarro, p. 898, ante.

DISSENTING

ROMUALDEZ, J.:

As I understand the decision appealed from, the judge a quo denied the petition which originated this case on the ground that the first proposition of the intervenor is well taken, namely, that the court below had no jurisdiction of

the subject matter since the petitioners did not constitute the board of inspectors, and for this reason the court did not permit the case to take its course or the parties to produce their evidence. I believe this to be an error, because I understand that the two petitioners, the only election inspectors interested in the correction of the copy of the election returns sent to the provincial treasurer, the other inspector, Gervasio Umali, took no part in the preparation of said returns and did not sign them,—constitute the board of inspectors for the purposes of the remedy provided in section 465 of the Election Law.

Wherefore, it seems to me the court below, should have decided the petition upon the merits, according to the evidence and in conformity with the law.

DISSENTING

VILLA-REAL, J.:

I regret to have to dissent from the majority opinion for the following reasons:

According to the last paragraph of section 421 of the Election Law, "The board of inspectors shall act through its chairman upon a majority vote of the members, the poll clerk having neither voice nor vote in its proceedings." One of the functions of the board of election inspectors is to prepare a statement of the votes and to certify the result, according to section 465 of said law. Under section 421 quoted above, the board of inspectors may validly and legally perform this act through a majority vote of the members. If the vote of a majority of the members of a board of inspectors is sufficient to validate the exercise of their function of preparing a statement and certifying the result of a count of votes, there is no legal reason to prevent this same majority from requesting the authority of a competent court to amend a statement prepared and signed by said majority. In using the phrase "board of inspectors" in connection with the amendment or alteration of the certificate of votes, the law does not mean all the members of which it is composed, for in section 421 it provides that the board of inspectors shall act upon a majority vote of its members.

If the law considers the official acts of a majority of the members of the board of inspectors as the official acts of the board itself, the petition to amend the returns filed by such a majority is a petition filed by the board. If this is so, the petition for permission filed by the petitioners, who composed a majority of the board of election inspectors for precinct No. 2 of Boñgabon, is a petition of the board itself, and therefore the respondent judge acquired jurisdiction to take cognizance of said petition.

If the respondent judge had jurisdiction to take cognizance of the petition for permission to amend the certificate of votes in question, was it within his discretion to exercise such jurisdiction or not? The majority is of opinion that it was. With all due respect, I believe that opinion is erroneous. When the intervention of a court is invoked by an interested party, it having jurisdiction over the plaintiff and the subject matter, such court, as an institution established by law for the administration of justice, is legally bound to exercise such jurisdiction, unless it is within the discretion of the court whether it will take jurisdiction of a case. (15 Corpus Juris, 816, section 116.)

The implied authority granted by law to the board of inspectors to amend the certificate of votes upon being judicially ordered to do so implies a command to the competent courts to take cognizance of a petition for permission duly filed with them by said board.

The respondent judge denied the plaintiffs' petition to amend for lack of merit upon the ground that he had no jurisdiction of the petition, inasmuch as it was not signed by all the members of the board of inspectors, but only by a majority thereof,—the third or remaining member having opposed the petition,—which opposition, in the opinion of the aforesaid respondent judge, upheld by the majority of the court, makes the case a contentious one.

Following this theory, so long as a member of the board of inspectors refuses to sign a petition to amend or opposes said petition, the Court of First Instance where it is filed cannot acquire jurisdiction, and the purposes of the law authorizing such an amendment through a judicial order, to annul election contests arising from errors, committed by boards of Inspectors in preparing the statements and certificate of the result of the count, would become nugatory. Inasmuch as the ballot boxes cannot be opened unless in the course of an election contest it becomes necessary to examine the ballots, according to the provisions of section 468 of the Election Law (*Rafols vs. Court of First Instance and Fiscal of Cebu*, 47 Phil., 736), the amendment of a certificate of votes can only be authorized when there is no need of resorting to the ballot boxes to do so. The opposition of one member of the board is therefore no bar to amending a certificate of votes, if, after hearing the evidence, the judge should be of opinion that the amendment can and may be made without the need of opening the ballot boxes.

Briefly, then, as the act of the majority of the board of inspectors for precinct No. 2 of Boñgabon in signing and filing the petition for permission to amend the copy of the certificate of votes sent to the provincial treasurer so as to conform with the copy sent to the Executive Bureau, was an act of the board of inspectors as a body, the respondent judge had jurisdiction to hear said petition; and since it is his ministerial duty to exercise his jurisdiction when such a petition is properly presented, and having refused to do so, he failed to comply with his ministerial duty and may be compelled to do so through the extraordinary legal remedy of mandamus.

Therefore, the writ of mandamus applied for should issue.

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