

**JOSE AGUILAR AND DEMETRIO CASAPAO, APPLICANTS AND APPELLANTS, VS. JUAN NAVARRO, OPPONENT AND APPELLEE.***G. R. No. 35800. July 30, 1931*

Ponente: VILLAMOR, J.

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This is an appeal by Jose Aguilar and Demetrio Casapao, election inspectors for precinct No. 2, municipality of Bongabon, Province of Mindoro, taken from the ruling of the Court of First Instance of the province, dated June 25, 1931, denying their petition for authority to correct the election returns forwarded to the provincial treasurer of that province.

The record shows that on the 10th of June, 1931, the two appellant election inspectors petitioned the Court of First Instance of Mindoro for authority to correct the election returns forwarded to the provincial treasurer so that the corrected returns should be considered by the provincial board of canvassers of Mindoro. The petition is based upon the ground: (1) That the election returns sent to the provincial treasurer, according to information obtained by the petitioners, failed to state the number of votes cast for the candidates for the office of provincial governor, whereas the copy forwarded to the Executive Bureau and that filed with the municipal treasurer of Bongabon, as well as the returns placed in the ballot box clearly show the following: That for the office of provincial governor, Arturo A. Ignacio received 106 votes and Juan Navarro received 46 votes; (2) that the aforesaid inspectors have evidently made a mistake, but without malicious intent on their part; (3) that the provincial board of canvassers has not yet canvassed the election returns for the various precincts of Mindoro; (4) that the said inspectors cannot correct the election returns for the second precinct of Bongabon without an order from a competent court, under the provisions of section 465 of the Election Law.

The case was set for hearing on June 25, 1931, and Juan Navarro, one of the candidates for the office of provincial governor, filed his answer opposing the petition for correction filed by the two election inspectors, on the ground: (a) That the canvass of the votes for provincial governor was not made because inspectors Jose Aguilar and Demetrio Casapao had planned to wait until all the returns for the province were in, so as to be able to adjudicate to Arturo Ignacio the number of votes needed to make him win the election; (b) that Gervasio Umali, the third election inspector for said precinct No. 2 of Bongabon, objecting to the procedure adopted by his two companions, in view of the serious liability they might incur in falsifying the inspectors' returns through the arbitrary entry of votes, refused to take part in the canvass and to sign the election returns of that precinct, as declared in his affidavit attached to the answer. We do not mention the alleged irregularity in the appointment of the election inspectors for that municipality, for such allegations are irrelevant to the issue.

After the answer had been filed, counsel for Juan Navarro moved for the dismissal of the case, and upon the motion being heard, the court entered an order setting forth the reasons for holding that there is no merit in the two inspectors' petition and therefore denied it. Counsel for the two inspectors, Aguilar and Casapao, filed a motion for reconsideration, which was denied by the court; the movants excepted to this ruling, and presented a bill of exceptions in due time.

The bill of exceptions contains the following stipulation:

"The parties to the above-entitled cause, through their respective undersigned counsel, desiring to expedite the proceedings in deciding the questions now pending between them, in view of their urgent nature, subject to the approval of the Supreme Court, have covenanted and agreed as follows :

"That the accompanying bill of exceptions prepared by the petitioners is correct, and shall be deemed presented, approved, and certified judicially upon this date without further proceedings; that the appellants shall directly file it with the Supreme Court; that this bill of exceptions be considered in the Supreme Court together with the extraordinary proceedings, case G. R. No. 35773; that the printing of said bill of exceptions be dispensed with; that the parties may present typewritten briefs, if they so desire, and that the period for doing so should be five days for the appellant, and five for the appellee.

"This agreement shall not prevent the opponent and appellee, Juan Navarro, from presenting in the Supreme Court an appeal from the decision appealed from is appealable or not.

"Manila, July 3, 1931.

"RAMON DIOKNO

"Counsel for the Appellants

"GUEVARA, FRANCISCO & RECTO

"Counsel for the appellee"

On July 7, 1931, the Supreme Court approved this agreement and ordered the consolidation of the causes Nos. 35773 and 36800.

The appellants make four assignments of error in their brief, to wit:

- The lower court erred in holding that the inspectors' returns may be ordered corrected only when the three inspectors so petition the court, and then only to correct a simple error or mistake.
- Granting this theory to be correct, the lower court erred in not holding that the returns having been certified by a mere majority of the board, it is this majority which is competent and may petition the court for authority to correct any error, since the other inspector did not share in the error and therefore has no error to correct.
- Both parties having admitted that three copies of the inspectors' returns—one in the Executive Bureau, another in the municipal treasury, and a third in the valid-ballot box—uniformly contain the results of the voting in that precinct, for the office of provincial governor, and that the copy in the hands of the provincial treasurer is silent on the point, the court below erred in holding that there is a contradiction between the inspectors' returns, and in not permitting the majority of the board of inspectors to correct the incomplete copy.
- The lower court erred in denying the motion for reconsideration, in not admitting evidence in the case, and in denying the authority requested."

On the other hand, the opponent and appellee, Juan Navarro, by virtue of the agreement quoted above, raises again and reproduces the following questions: (a) That the ruling of the Court of First Instance of Mindoro is final; and (b) that inasmuch as the law does not permit an appeal in the present case, mandamus will not lie to take its place, to the end that this Honorable Court may review the ruling of the court below for the purpose of ascertaining whether the latter has committed an error.

The first question logically coming up for decision is whether an appeal may be taken from the ruling of the court below denying the petition of the appellant election inspectors for authority to correct the election returns forwarded to the provincial treasurer, in accordance with section 465 of the Election Law. The portion of said

section relating to this question, is the amendment recently introduced by the Legislature, to wit: "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."

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.

In *Benitez vs. Paredes and Dizon* (52 Phil., 1), a majority of this court held that the consent of the inspectors was necessary for the correction in order that the court might grant the authority requested.

Both parties discuss the significance of this pronouncement in their briefs, and although in the case cited there was no opposition to the petition for correction as in this case, we believe that the doctrine there established is applicable to this case, because from the moment an interested party files an opposition, the case becomes a contentious one, to be ventilated in the course of the election contest provided for by law.

The petition to correct election returns is a summary proceeding taken before the proclamation of the results of the election. With the ruling of the court, granting or denying it, the proceeding comes to an end, giving way, as the case may be, to the proper election protest. The ruling of the court, while it concludes that proceeding, does not prevent the interested party from contesting his opponent's election according to the procedure provided by law.

We have quoted above the portion of the law relevant to the issue, from which it may be seen that it does not provide for an appeal from the ruling of the court below in such matters. According to section 18 of Act No. 136, the Supreme Court has appellate jurisdiction of all actions and special proceedings properly brought to it from Courts of First Instance, and from other tribunals from whose judgment the law specially provides an appeal to the Supreme Court. And it is a well recognized principle of law that an appeal to a higher court may only be taken when the law so provides. The only provision of the Election Law authorizing an appeal to the Supreme Court is section 480, which reads as follows, to wit: "An appeal may be taken to the Supreme Court within ten days, from any final decision rendered by the Court of First Instance on contests of elections for provincial governors, or members of the provincial board, or municipal presidents, for the review, amendment, repeal or confirmation of such decision, and the procedure thereon shall be the same as in a criminal cause." Whereas we are here dealing with a ruling of the Court of First Instance of Mindoro upon a petition for authority to correct election returns.

We are therefore of the opinion and so hold, that the ruling of the Court of First Instance of Mindoro here in question is unappealable. In view of this conclusion, it is unnecessary to discuss the other points raised by both parties in their briefs.

The appeal is denied and the case dismissed with costs against the appellants. So ordered.

Johnson, Street, and Malcolm, JJ., concur.

ROMUALDEZ, J., concurring:

Being compelled since July 23, 1931, to take part as a member of this court in cases prosecuted or defended by the law firm "Guevara, Francisco & Recto," which I had previously refrained from doing out of delicacy, I here vote for the dismissal of the appeal in case G. R. No. 35800 on the ground that the ruling of the court below was unappealable.

Avanceña, C. J., Villa-Real, and Imperial, JJ., concur in the result.

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