

EXEQUIEL KARE, PETITIONER, VS. SERVILIANO PLATON, JUDGE OF FIRST INSTANCE OF ALBAY, FRANCISCO PERFECTO, SULPICIO V. CEA, GERONIMO P. VIBAL, AGRIPINO SEGOVIA, AND FELIPE GARCIA, ...

G. R. No. 35902. October 28, 1931

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

In this original action arising from an election contest with reference to the office of third member of the provincial board of Albay, it is prayed that a writ of prohibition be issued against the respondent judge requiring him to desist and refrain from having his order of July 11, 1931, executed or enforced.

It appears from the complaint and the answer: (1) That the petitioner filed a motion of protest in the Court of First Instance of Albay contesting the election of the respondent Francisco Perfecto, upon the grounds alleged therein; (2) that the respondent Judge of the Court of First Instance of Albay entered an order on July 11, 1931, requiring the petitioner to give two kinds of bond in order that proper proceedings might be taken on his motion of protest: A personal bond for P3,000 and a cash bond of P2,000 to be deposited with the provincial treasurer of Albay within the time specified in the order. These sums were later changed so that the cash bond was for P1,500 and the personal bond for P3,500.

The petitioner invoked section 482 of the Election Law in support of his contention. The respondent judge bases his action upon the same section and also upon section 479 as lately amended by Act No. 3699. Section 482 provides:

"Bond or cash deposit required of contestants.—Before the court shall entertain any such contest or counter-contest or admit an appeal, the party filing the contest, counter-contest, or appeal shall give bond in an amount fixed by the court with two sureties satisfactory to it, conditioned that he will pay all expenses and costs incident to such motion or appeal, or shall deposit cash in court in lieu of such bond. * * *"

This section, it should be observed, is preceded by the heading, "Bond or cash deposit required of contestants," which apparently indicates that the court taking cognizance of the election contest may require the contestant either to give a bond or to make a cash deposit. But the petitioner contends that the right to choose between giving a personal bond and depositing a sum of money in lieu thereof is granted only to the contestant or appellant. If there be any conflict between the heading of the section under question and the body, it must be settled according to the canons of statutory construction. Black on Interpretation of Laws, page 181, says: "Headings prefixed to the titles, chapters, and sections of a statute or code may be consulted in aid of the interpretation, in case of doubt or ambiguity; but inferences drawn from such headings are entitled to very little weight, and they can never control the plain terms of the enacting clauses." In a case in Kansas (Griffith vs. Carter, 8 Kan., 565), it is said that when a statute is divided into separate subjects or articles, having appropriate headings, it must be presumed and held that the provisions of each article are controlling upon the subject thereof and operate as a general rule for settling

such questions as are embraced therein. But the rule accepted by most of the authorities is that if the chapter or section heading has been inserted merely for convenience of reference, and not as an integral part of the statute, it should not be allowed to control the interpretation. (*Union Steamship Co. vs. Melbourne Harbour Trust Comm'rs.*, L. R. 9 App. Cas., 365.)

Applying this rule to the case at bar, it will be seen that the present section provides that before the court entertain any contest or counter-contest or admits an appeal, the party filing the contest, counter-contest or appeal shall give bond with two sureties to the satisfaction of the court, or deposit cash in court in lieu of such bond. The contending parties differ in this that while the respondent judge holds that the court may require either a bond or a cash deposit, the petitioner maintains that it is to him alone the choice is given to file a personal bond or to make a cash deposit in lieu thereof, inviting our attention to the opinion of the Attorney-General dated August 21, 1928, on the interpretation of the aforesaid section 482 of the Election Law. The Attorney-General was of the opinion that in election contests the contestant had to give a personal bond in the amount fixed by the court with two sureties satisfactory to it, and that since he was under this alternative obligation, according to article 1132 of the Civil Code, he was entitled to choose one or the other of the alternatives. We hold that the court may only require a personal bond, and that the contestant may make a cash deposit in lieu thereof.

We shall now see how the court has demanded two kinds of bond of the petitioner by means of the order dated July 11, 1931. It reads as follows:

"The bond to be given by the petitioner within five days hereafter with solvent sureties satisfactory to this court is hereby fixed at five thousand pesos (P5,000) whereof P3,000 shall be in the form of a personal bond, and P2,000 in cash to be deposited by the petitioner with the provincial treasurer within the time given. Both bonds shall answer for the costs and expenses arising from this contest. The P2,000 cash shall be applied to the payment of the first costs of transportation and the daily allowances of such municipal treasurers, and municipal, provincial, and insular employees as may be cited to appear before the court in connection with this contest, and the commissioners' fees of those whom the court may appoint."

Although this order provides that of the P5,000 bond, P3,000 shall be in the form of a personal bond, and P2,000 in cash (or as subsequently altered, P3,500 shall be in the form of a personal bond, and P1,500 in cash); nevertheless, the amount of P1,500 in cash does not coincide with the legal definition of a bond, inasmuch as it is intended to defray the initial expenses arising from the contest. In reality, this sum of money is an advance given by the contestant to defray the required expenses for the expedition of the contest. Formerly the provincial treasury paid these expenses in the first instance, but section 479 of the Election Law which so provided, was amended by Act No. 3699, relieving the provincial treasury of this obligation, thereby implying that in election cases the contestant is to supply whatever may be necessary for the prompt despatch of his protest.

There is no question as to the court's discretionary power to demand of a contestant a certain sum of money in advance to meet the initial expenses arising from the contest, such as the production of ballot boxes in court, etc. It is true that the bond obliges the contestant or his sureties to pay all the costs arising from the contest, should he be defeated, but the bond is not to be executed until the final determination of the protest. And it is well known that certain services are required in the course of election contests which must be paid for immediately, because it would be unjust to delay their payment until the termination of the contest.

Considering the order of July 11, 1931, in this sense, we believe that although it does not adhere strictly to legal technical phraseology, there is in it no excess of jurisdiction or abuse of judicial discretion to be rectified by means of the writ applied for.

Wherefore, the petition must be and is hereby denied, without special pronouncement of costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Ostrand, Romualdez, Villa-Real, and Imperial, JJ., concur.

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