

DIEGO CUEVAS, PETITIONER, VS. JUAN G. LESACA, JUDGE OF FIRST INSTANCE OF BULACAN, AND FRANCISCO VIOLAGO, RESPONDENTS.*G.R. No. 35937. September 02, 1931*

Ponente: VILLAMOR, J.

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This is a petition for a writ of mandamus against the respondent judge to compel him to permit the opening of the ballot boxes of precincts 1 and 4 of the municipality of San Ildefonso, Bulacan, for an examination of their contents in connection with the election contest instituted by the petitioner in the Court of First Instance of the province, against the other respondent, Francisco Violago, municipal president elect of that municipality.

From the allegations it appears: That the petitioner was a qualified elector and candidate voted for municipal president of San Ildefonso, Bulacan, in the general election of June 2, 1931; that both the petitioner and the respondent, who were also candidates voted for municipal president in that election, duly filed their certificates of candidacy; that within the period fixed by law, the petitioner filed a motion in the Court of First Instance of the province contesting the election of the respondent Francisco Violago, alleging: That in precinct 1 of that municipality the election inspectors fraudulently and unlawfully counted 18 votes for the contestee, which they should not have done, because the candidate's name was not written in the space intended for municipal president; that said election inspectors fraudulently and unlawfully failed to count 10 votes cast in favor of the contestant, which they should have accredited to him; that in precinct 4 of the same municipality, the election inspectors fraudulently and unlawfully counted 40 votes for the contestee, which they should not have counted because his name was not written in the space intended for municipal president; while fraudulently and unlawfully, the same election inspectors did not count 30 votes cast in favor of the contestant, which should have been accredited to him; that if it were not for this undue appreciation and improper adjudication of votes in precincts 1 and 4, the contestant would have won in the election by a plurality of 90 votes.

At the hearing of the motion, the contestant requested the court to order the opening of the ballot boxes from precincts 1 and 4 of the municipality of San Ildefonso, and the court ordered the presentation of preliminary evidence of fraud so as to determine whether the request might properly be granted; after hearing a number of witnesses, the court decided negatively.

The point here raised regarding the opening of ballot boxes has several times been decided by this court. In *Cecilio vs. Belmonte* and Court of First Instance of Nueva Ecija (48 Phil., 243), where the court reviewed the earlier cases dealing with this question, it was held that where irregularity in the conduct of the election inspectors in recounting the ballots is alleged in the motion of protest, it constitutes a sufficient ground for opening the ballot boxes and examining the questioned ballots.

In *De la Merced vs. Revilla and Camacho* (40 Phil., 190), this court, confirming the doctrines laid down theretofore, held that the law does require a prima facie showing other than the allegations in the protest, of fraud and irregularities in order to authorize the opening of the ballot boxes. It was furthermore held that in a motion of

protest, duly raising the question of the legality or illegality of ballots cast and the counting thereof, the law requires the court to have brought before it all ballots used at the election in the precincts which are questioned. It is a right to which the protestant is entitled when a question has been duly raised, and the court has no right or authority to deny it. The law is mandatory.

Wherefore, it is ordered, that within the briefest possible period, the respondent judge order the opening of the ballot boxes from precincts 1 and 4 of the aforementioned municipality of San Ildefonso, Bulacan, and examine the questioned ballots, thereafter deciding the cause upon the merits according to law. Without special pronouncement of costs. So ordered.

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

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