

PEDRO V. MANZA ET AL., PETITIONERS, VS. EDUARDO GUTIERREZ DAVID, JUDGE OF FIRST INSTANCE OF TAYABAS, ET AL., RESPONDENTS.

G. R. No. 42181. August 24, 1934

Ponente: GODDARD, J.

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GODDARD, J.:

This is a petition for a writ of prohibition in which it is prayed:

"Por tanto, al Honorable Tribunal respetuosamente pide que, previos los tramites correspondientes, declare que el Juez recurrido no adquirio ni tiene jurisdiction para conocer de dicha protesta excepto para sobreseerla; y expida un mandamiento de inhibition para que se abstenga de continuar conociendo de la misma—con las costas a los recurridos."

Within the time fixed by law a motion of protest was filed in the Court of First Instance of Tayabas in which the election to the offices of municipal president and municipal councilors of the municipality of Lopez, Province of Tayabas, was contested. This protest was signed and sworn to by Emilio A. Siazon, a candidate for the office of municipal president, and clearly shows upon its face that its object was to contest the election of June 5, 1934, for all of the above-mentioned offices. The first paragraph of that motion reads in part as follows: "Comparecen los recurrentes, y como motivo de action, Emilio Siazon contra los recurridos Tomas V. Florido y Perfecto Reyes, y los demas recurrentes contra los recurridos * * *, respetuosamente alegan:" The first allegation in the motion commences as follows: "Que los recurrentes son mayores de edad, etc." and further alleges that "Emilio Siazon siendo candidato registrado y votado para el cargo de Presidente Municipal de L6pez, Tayabas, y siendo los demas recurrentes candidates registrados y votados para el cargo de Concejal, del mencionado municipio * * *."

In view of the fact that this motion of protest was signed by Emilio A. Siazon and not signed by any of the other contestants, a motion was presented asking that the protest be dismissed as to the offices of municipal councilors. After that motion was filed the persons included therein as contestants for the offices of municipal councilors filed an affidavit which reads as follows:

"Antonio D. Villapando, Jose R. Barros, Rufo Javier, Emilio A. Mascardo, Efigenio Panganiban, Leon Salumbides y Potenciano Desembrana, previo juramento, en forma legal, declaran: Que la motion de protesta presentada en esta causa con fecha 20 de junio de 1934, y suscrita por Emilio A. Siazon en su propia representation, y en nombre y representacion de los aqui declarantes, fue de hecho presentada, suscrita y jurada bajo nuestra expresa autorizacion; que los declarantes tambien ratifican y aprueban y hacen suyo todo lo que el mencionado Sr. Siazon ha hecho hasta ahora en relation a dicha motion de protesta."

This affidavit was sworn to on July 9, 1934. In view of this affidavit Judge Gutierrez David denied the motion to dismiss the protest. Whereupon this petition for a writ of prohibition was filed. This petition alleges in substance that the respondent judge lacks jurisdiction to hear and decide this protest for the following reasons: That in the motion under consideration two protests are joined, one for the office of municipal president and the other for the

offices of municipal councilors, and that said motion is not signed by any of the candidates for the office of municipal councilor or by any person competent to appear for them.

In the case of Lichauco vs. Alejandrino and Weinmann (21 Phil., 58), Faustino Lichauco, who was not an attorney, brought that action for himself and in representation of his coheirs. That case seems to have been tried by the lower court upon the theory that all of the interested parties were present. This court set aside the judgment of the lower court with this proviso: "* * * unless the coheirs of Faustino Lichauco, within a period of ten days from notification of this decision, shall appear personally or by attorney in the Court of First Instance of the Province of Pampanga, either as plaintiffs or defendants, and in writing indicate their full conformance with the proceedings had in the present cause. In which case, the Court of First Instance of the Province of Pampanga is hereby directed to enter a judgment confirming the judgment heretofore rendered by said court on the 10th day of February, 1910."

In the motion of protest now under consideration the parties in interest, who did not sign the motion, appeared personally in writing by means of the affidavit quoted above and not only ratified and approved that motion but also stated that it was presented and sworn to by Emilio A. Siazon on their behalf and under their express authorization. This cured, from the date of filing, any defect that the motion of protest may have had by reason of the fact that Siazon was the only one of the contestants who signed the same.

Section 479 of the Administrative Code, as amended by Act No. 3834, prohibits the filing of a joint election protest for the offices of municipal president and municipal councilor. Although this point was raised by the herein petitioners for the first time before this court, in view of the express prohibition in the above-mentioned section, as amended, the hearing of the motion of protest under consideration may be continued before the Court of First Instance of Tayabas as to the contestant Emilio A. Siazon for the office of municipal president, and, in conformity with the decision of this court in G. R. No. 42071,[1] the other contestants should be allowed to file a separate protest, as of the date of the filing of the joint protest, within ten days after receiving notice of this decision.

"It has been frequently decided, and it may be stated as a general rule recognized by all the courts, that statutes providing for election contests are to be liberally construed, to the end that the will of the people in the choice of public officers may not be defeated by merely technical objections." (Galang vs. Miranda and De Leon, 35 Phil., 269, 271.)

Writ of prohibition denied, without costs.

Malcolm, Villa-Real, Imperial, and Butte, JJ., concur.

[1]Katipunan vs. Zandueta, p. 220, ante.

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