

**JOSE MONTIAGUE, PETITIONER, VS. MARIANO BUYSON LAMPA,
JUDGE OF FIRST INSTANCE OF ILOILO, AND GERMANICO LEGASPI,
RESPONDENTS.***G. R. No. 42718. December 15, 1934*

Ponente: IMPERIAL, J.

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This case embraces two petitions for a writ of certiorari. In the first petition (G. R. No. 42718) Jose Montiague seeks to set aside that part of the order entered by the respondent judge on October 15, 1934, taking into consideration the motion for reconsideration filed by the respondent therein Germanico Legaspi and declaring that each of them had obtained 1,259 votes for the office of municipal vicepresident of Miagao, Province of Iloilo, in the general elections held on June 5, 1934, and that having tied, they should appear before the court for the purpose of determining by drawing lots who has been definitively elected to said office.. In the second petition (G. R. No. 42727) Germanico Legaspi likewise seeks to set aside the same order of October 15, 1934, in so far as it set aside the respondent judge's decision promulgated on September 26th of said year and ordered a second drawing of lots, ignoring the former, which had already been made, without first declaring it null and void on a lawful ground.

In both cases the respondents, with the exception of the judge, filed their answers admitting the truth of the material and important allegations in the petitions. In the former case, upon petition of the petitioner therein and after he had filed the necessary bond, a preliminary injunction was issued directing the judge to refrain, until further orders, from continuing to act upon election case No. 9906 of the Court of First Instance of Iloilo.

In the general elections held on June 5, 1934, the herein petitioners were candidates for vice-president in the municipality of Miagao, Province of Iloilo, each having obtained 1,263 votes, according to the result of the canvass made by the municipal council of said municipality acting as municipal board of canvassers. Inasmuch as the election for said office resulted in a tie, the board, pursuant to the provisions of section 477 of the Revised Administrative Code, as amended, ordered the petitioners to draw lots to which they submitted voluntarily, with the result that luck favored Germanico Legaspi. Immediately afterwards, the municipal board of canvassers proclaimed Germanico Legaspi elected vice-president.

On July 9, 1934, Jose Montiague filed a protest against Germanico Legaspi, which protest was docketed as case No. 9906. The protest was based on alleged irregularities committed in the counting of votes in the different election precincts. Legaspi answered the protest and filed a counter-protest likewise based on other alleged irregularities. After the hearing, the court, on September 26, 1934, rendered judgment declaring Germanico Legaspi elected to said office with a plurality of two (2) votes over his opponent.

Five (5) days after Jose Montiague had been duly notified of the judgment, he filed a motion for reconsideration thereof, alleging errors of law and of computation or counting of votes. Sixteen (16) days after Germanico Legaspi had been notified of the judgment, he likewise filed a motion for reconsideration also claiming the

commission of errors of fact and of law. On the 15th day of October following, the court entered the order under consideration revoking its judgment of September 26th, and declaring that the petitioners again tied because each had received 1,259 votes for the office of vice-president. Germanico Legaspi filed a motion for reconsideration of said order of October 15th and excepted to the resolution denying his motion. Jose Montiague excepted to the same order of October 15th and announced his intention to appeal therefrom.

Pending these appeals, Germanico Legaspi filed a motion to set aside the judgment rendered by the respondent judge in a quo warranto proceeding, civil case No. 10026 of the Court of First Instance of Iloilo, declaring that said Legaspi had no right to occupy the vice-presidency of Miagao or to perform the duties inherent therein, nor to act as municipal president ad interim pending these certiorari proceedings, and directing him to refrain from continuing to perform the duties pertaining to said office. Although the motion could be considered as a supplementary petition, this court deems it unnecessary to pass upon the new phase of the cases in view of the opinion which it has already formed thereon and the resolution which shall be rendered later.

In said motion the petitioner prays that the respondent judge be directed to show cause why he should not be declared in contempt of court for trying the quo warranto case and for entering the order in question while the preliminary injunction was in effect. This court holds that the petition is unfounded because there was no such violation in view of the fact that the prohibition referred to therein related only to further proceedings in election case No. 9906.

Jose Montiague contends that that part of the order of October 15, 1934, which is prejudicial to him, is unlawful and has been entered by the respondent judge in excess of his jurisdiction on the ground that in re-examining the ballots said judge took into consideration the motion for reconsideration filed by Germanico Legaspi outside the reglementary period, and in this manner again examined the ballots cast in favor of the latter and failed to adjudicate to said Montiague a plurality of eight (8) votes over his opponent.

Germanico Legaspi, in turn, contends that said order is likewise null and void on the ground that it was entered after the judgment of September 26th had already become final and was executed and, furthermore, the judge, in entering it, did not take into consideration or annul the first drawing of lots made between him and Montiague in the presence of the municipal board of canvassers.

As regards the contention of the petitioner Jose Montiague, this court has already held in the case of Santos vs. Court of First Instance of Cavite (49 Phil., 398, 404), that " * * * As a matter of court practice the courts, undoubtedly, have the power to reexamine the evidence that they have before them in order to decide the question raised, when one of the parties asks for a reconsideration of the original decision, and we see no valid reason why this rule, which is followed in ordinary actions, cannot be applied to election contests." Applying this rule, it appears that the respondent judge did not exceed his jurisdiction in reexamining Legaspi's ballots as a result of the motion for reconsideration filed by his opponent Montiague and even setting aside the motion for reconsideration filed outside the reglementary period by the petitioner Germanico Legaspi. The respondent judge, in the exercise of his jurisdiction, could also, *motu proprio*, reexamine all the ballots of both candidates and set aside the decision previously promulgated before it became final and was executed, for the purpose of making his decision conformable to the weight of the evidence.

As regards Germanico Legaspi, the admitted facts show that he and Jose Montiague appeared before the municipal board of canvassers and voluntarily submitted to the drawing of lots which was made for the purpose of breaking the tie and deciding by lot who had been elected to said office. In the case of Radaza vs. Enaje (53 Phil., 149, 154), this court, in determining the legal effects of a drawing of lots to which the parties had submitted before the board of canvassers for the purpose of breaking the tie and deciding who was duly elected municipal

president of Naval, stated as follows:

"The protestant alleging and contending that he was proclaimed the winner in the drawing of lots by reason of the tie, and thereafter in taking possession of the office, and attempting to prevent the protestee from holding it, may and should be considered to have deliberately induced his opponent to believe that the drawing was legal, and to act upon said belief in the legality and validity of said tie, and, therefore, he cannot be permitted to deny his own acts. Between him and the protestee, there exists, with respect to the election herein disputed, the presumption *juris et de jure*, which cannot be rebutted in any way, that the said tie of votes between them in the election for municipal president of Naval, was valid and lawful, and consequently that the canvass of all the precincts of that municipality, which resulted in said tie, is also valid and lawful. The protestant is estopped, and the law forbids him from attacking now the validity and legal effect of the canvass in the precincts mentioned in his motion of protest. (Sec. 333, No. 1, Code of Civil Procedure.)

"In view of the foregoing, we hold that even supposing that the allegations in the motion of protest conferred jurisdiction upon the court below to try this case, it is a fact that there has arisen against the protestant the indisputable and conclusive presumption that the election returns which he now tries to attack were made in full accord with the laws and regulations."

The same thing happened with the herein petitioners. There was a tie between them and in order to determine who was entitled to the office of vice-president, both voluntarily submitted to the drawing of lots made by the municipal board of canvassers, luck having favored the petitioner Germanico Legaspi who was declared elected and proclaimed vice-president. Applying the doctrine laid down in the above cited case of *Radaza vs. Enaje*, no other conclusion can be arrived at but that Jose Montague was estopped from attacking the validity of the election for the office of vice-president on the ground that in submitting to the drawing of lots there arose against him the irrebuttable presumption that the canvass made in the different precincts of the municipality as well as that made by the municipal board of canvassers was correct and binding and, consequently, the election held in the entire municipality, in connection with the office of vice-president, was lawful and valid.

As corollary of the foregoing it should be declared that Jose Montague had no right to file his protest against Germanico Legaspi, questioning the validity of the latter's election as municipal vice-president of Miagao and, consequently, the respondent judge exceeded his jurisdiction in allowing the protest and proceeding with it in the manner already stated, because his only authority consisted in definitely dismissing the motion of protest.

Having arrived at the preceding conclusion, it is unnecessary to consider and pass upon the other questions raised by the petitioner Legaspi.

Wherefore, the remedy applied for by Germanico Legaspi is granted and it is held: that it is Legaspi who was duly elected vice-president of the municipality of Miagao, Province of Iloilo; that Jose Montague had no right to protest against the former's election to said office, and all the proceedings in election case No. 9906 of the Court of First Instance of said province are null and void, with the costs of both proceedings against Jose Montague. So ordered.

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

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