

FELIPE SALCEDO, PROTESTANT AND APPELLANT, VS. FRANCISCO HERNANDEZ, PROTESTEE AND APPELLEE.

G. R. No. 44627. December 11, 1935

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a ruling of the Court of First Instance of Tayabas dated October 10, 1935, which is as follows:

"AUTO

"Considerada la mocion de 18 de septiembre, 1935, presentada por los abogados del recurrido Francisco Hernandez pidiendo, por las razones en ella expuestas, que este Juzgado se abstenga de todo procedimiento ulterior, en esta protesta electoral declarando la misma sobreseida bajo el fundamento de que el Juzgado ya carece de jurisdicción para conocer de ella; habiendose concedido a la parte protestante el plazo que pidio su representation para contestar por escrito a esta motion y cuyo plazo ha transcurrido con exceso y expirado tambien sin que por dicha parte recurrente se haya presentado la contestacion que se reservo presentar, quedando así sin efecto la autorizacion o reserva cohcendida a la parte recurrida para replicar en su caso a dicha contestation no presentada.

"Estimando los fundamentos alegados en dicha mocion del recurrido; vistas las disposiciones del articulo 479, parrafo 2.º, de la Ley Electoral así como su interpretation por la Corte Suprema en el asunto Portillo contra Salvani (54 Jur. Fil., 579), cuya parte pertinente y correspondiente se acota en dicha mocion; y considerando que esta protesta electoral se inicio en este Juzgado en 18 de junio de 1934, ha expirado en 18 de junio de 1935 el plazo de un año para que el Juzgado pueda dictar validamente cualquiera decision en ella, estando, como esta, prohibido o vedado por precepto mandatorio de dicha Ley.

"El Juzgado, accediendo a ella, se abstiene de conocer en ulterior procedimiento del presente expediente de protesta electoral y lo declara sobreseido por falta ya de jurisdiccion para conocer de la misma. Así se ordena."

For the better understanding of this order, it should be stated that this same election contest was before this court on a former appeal, G. R. No. 42992, and on rehearing thereof this court on August 9, 1935, entered the following order:

"We have decided therefore to revoke our decision in this cause, promulgated on May 17, 1935, and hereby remand the cause to the Court of First Instance (1) to count the actual ballots found in the ballot boxes in the precincts affected by the protest and counter-protest and determine the validity of any such not heretofore determined; (2) to receive evidence and determine the validity of the thirty-six ballots in precinct No. 8 covered by the appellee's second assignment of error and (3) to render another judgment, without special pronouncement as to costs in this instance."

No motion for reconsideration was filed and the cause was remanded to the Court of First Instance of Tayabas for compliance with the said order of August 9, 1935. In that court the protestee-appellee Hernandez thereupon filed a

motion to dismiss the protest on the ground that the Court of First Instance had no jurisdiction to make any orders in the case because it is provided in paragraph 2 of section 479 of the Election Law that "All proceedings in an electoral contest shall be terminated within one year", it appearing that the original motion of protest was filed in the Court of First Instance on June 18, 1934.

We are of the opinion that the order of the trial court sustaining this motion and dismissing the protest for lack of jurisdiction was erroneous. The limitation period of one year referred to in said section 479 of the Election Law applies only to proceedings in Courts of First Instance. (*Cacho vs. Abad*, 61 Phil., 606) It has no application to appeals in election cases pending in the Supreme Court. As to such appeals, section 480 of the Election Law provides as follows:

"SEC. 480. Appeal to Supreme Court in contested election case.—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."

The case of *Portillo vs. Salvani* (54 Phil., 543), relied upon by the trial court is not in point because that case related to the original trial of an election case in the Court of First Instance which was not terminated within the period of one year as required by section 479 of the Election Law. By way of caution, however, this court in that decision said:

"What has been here said is confined to a discussion of the first assignment of error and the arguments of the parties thereon, and does not purport to decide the legal effect of extraordinary remedies instituted in this court against Courts of First Instance as tolling the time and so extending the year within which the proceedings must be concluded, a point not discussed on this appeal."

If we take the view that the lodging of an appeal in this court in an election case tolls the running of the limitation of one year and applying it to the present case, we note that from June 18, 1934, the date of the filing of the protest, to January 4, 1935, the date of the elevation of the case to this court on the first appeal, a period of only six months and seventeen days had elapsed thus leaving a period of five months and thirteen days for further proceedings in the Court of First Instance. The further proceedings to be taken as required by the order of this court of August 9, 1935, fell within the unused portion of the year still available to the Court of First Instance and the trial court erred in interpreting this limitation as including the time the case was pending on appeal in the Supreme Court.

The only limitation with reference to the time of disposition of election cases which the Election Law imposes on the Supreme Court is contained in section 481 in the following language:

"The Court of First Instance and the Supreme Court shall hear election contest in preference to all other cases and shall try and decide them as soon as possible, whether it be a regular term of court or not." This preference in favor of election cases has been religiously observed in this court, but we do not construe that language nor the language of section 480 as restricting the inherent jurisdiction of the Supreme Court to remand an election case where it is necessary and proper in order to achieve the ends of justice.

It was upon these considerations that this court entered its order of August 9, 1935, aforesaid. It was the duty of the trial court to carry out and not to question the correctness of the order of this court of August 9, 1935.

The order appealed from is reversed and the Court of First Instance of Tayabas is directed to comply without further delay with the order of this court of August 9, 1935, aforesaid. Costs in both instances against the protestee-appellee.

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

Order reversed with instructions.

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