

MARIANO SANTOS ET AL., PETITIONERS, VS. SIXTO DE LA COSTA, JUDGE OF FIRST INSTANCE OF RIZAL, ET AL., RESPONDENTS.*G.R. No. 45990. March 31, 1938*

Ponente: LAUREL, J.

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The instant petition for a writ of certiorari arose in connection with a protest filed in the Court of First Instance of Rizal contesting the election of the petitioners as municipal councilors-elect of Las Piñas, Rizal.

In the general elections held on December 14, 1937, the petitioners herein were elected municipal councilors of Las Piñas, Rizal. On December 29, 1937, a motion of protest against the said petitioners was filed in the Court of First Instance of Rizal, presided over by Hon. Sixto de la Costa, one of the respondents herein. (Civil Case No. 6965.) Thereafter, on January 18, 1938, the petitioners filed a motion for the dismissal of the protest on the ground that the court below had not acquired jurisdiction over the protest as there was no allegation in the motion that it was filed within two weeks after the proclamation of the elected candidates. On January 22, 1938, the respondent judge heard the parties orally and, on the same date, issued an order disallowing the motion for dismissal. It is this order of January 22 which is now being assailed.

Section 479 of the Election Law, as amended by Commonwealth Act No. 233, provides that the contest shall be filed with the proper Court of First Instance "within two weeks after the proclamation" of the elected candidates. This requirement means that the protest must be actually filed within the peremptory period. A simple averment in the motion that it was opportunely filed if in fact it was filed beyond the prescribed period will not confer jurisdiction.

In the present case, the elections were held on December 14, 1937. This is alleged in the motion of protest and is, besides, a fact of which we can take judicial notice. The motion also states that the seven protestees were proclaimed elected by the municipal board of canvassers of Las Piñas. While the canvassing of the returns and the consequent proclamation of the candidates-elect are part of the election itself in a broad sense, the proclamation can only take place after the election. Thus, in the case of the provincial board of canvassers it is required to meet "as soon as practicable, within the fifteen days next following the election" (sec. 469 of the Election Law as amended by Commonwealth Act No. 233), and in the case of canvass by the municipal council, this body is required to meet in special session "immediately after the election * * * and shall proceed to act as a municipal board of canvassers." (Section 477, Election Law.) When the law refers to a certain number of days within which the proclamation must be made following the election, the starting point is the election day and the proclamation could only be made thereafter. The election takes place at a given date determined by law. The polls are required to be open from seven o'clock in the morning until six in the afternoon, and votation may be extended beyond the prescribed time to enable voters who at six o'clock in the afternoon were "present within a radius of fifty meters from the polling place" awaiting their turn to vote. (Sec. 446, Election Law.) From the closing of the polls to the proclamation of elected candidates, various steps are required to be taken: the comparison of the registration lists with the number of ballots cast, the segregation of excess and spoiled ballots, the examination for marked ballots,

the counting of good ballots, the preparation of the certificate of results, the public oral proclamation of the result, the transmittal to the municipal treasurer of the certificates of result, the production of said certificates before the municipal board of canvassers, and the canvassing of the votes cast for each municipal office by the said board. (See secs. 446, 460, 462-465, 467 and 477, Election Law.) All these steps must precede the proclamation. To give the board of canvassers ample time and to avoid hurried or precipitated proclamation, the law in the case of the provincial board of canvassers requires canvass and proclamation to be made "within the fifteen days next following the election," and in the case of the municipal board of canvassers "after the election." In our case, the earliest that the proclamation could have taken place was the 15th of December, the day following the election. The motion of protest was filed on the 29th. The same was therefore filed within the two-week period required by law. From the 15th to the 29th of December is exactly fourteen days.

The petition for a writ of certiorari should be, as it is hereby, denied. Costs are against the petitioner. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Concepcion, JJ., concur.

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