

ARSENIO LUGAY, PETITIONER, VS. DIEGO LOCSIN, JUDGE OF FIRST INSTANCE OF TARLAC, AND PROCOPIO HILARIO, RESPONDENTS.*G.R. No. 46092. August 08, 1938*

Ponente: DIAZ, J.

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This certiorari proceeding was commenced to test the correctness and validity of two resolutions of the respondent judge denying two motions for dismissal filed by petitioner, in the case entitled "Election Case No. 4442, Procopio Hilario, petitioner, vs. Arsenio Lugay et al., respondents", of the Court of First Instance of Tarlac in which herein petitioner was one of the respondents.

Procopio Hilario filed an election protest against petitioner and four other candidates in which, for the reasons (violations of law, frauds and irregularities) therein set forth, he challenged the election and proclamation of the former as mayor-elect of the municipality of Tarlac, Tarlac. Among other allegations in the protest of Procopio Hilario which, it may be said in passing, was sworn to, was the following:

"First. That petitioner is of legal age and resident of the municipality of Tarlac, Tarlac, and was a registered candidate voted for the office of mayor of Tarlac, Tarlac, Philippines, in the elections held in said municipality on December 14, 1937.

"Second. That petitioner was eligible to the office of mayor of Tarlac, Tarlac, Philippines.

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"Seventh. That were it not for the violations of law, frauds, and irregularities mentioned in the next preceding paragraph, petitioner would have obtained over his nearest opponent, Arsenio Lugay, a majority of approximately 629 votes in said precincts Nos. 1, 5, 6, 11, and 13 of Tarlac, Tarlac."

After service of petitioner's answer as respondent in case No. 4442 aforementioned of the Court of First Instance of Tarlac to the protest of Procopio Hilario in which, besides a general denial and other special defenses which need not be mentioned, he interposed the following defense:

"1. That the allegations of the motion of protest did not confer on this Honorable Court jurisdiction over the subject matter of the litigation, and respondent Lugay hereby announces his intention to contest the jurisdiction of this Honorable Court to decide the case on its merits", he filed a separate petition for the dismissal of the case on the ground that an allegation which simply avers that "he was a registered candidate voted for", as that appearing in the protest of Procopio Hilario, is not sufficient to confer jurisdiction on the respondent judge to try the case. The respondent judge denied the motion by resolution dated February 2, 1938, declaring in substance that the protest contained the required jurisdictional allegations to confer authority to take cognizance thereof.

After a few weeks without any other incident, the protest was heard and the protestant Procopio Hilario adduced therein all his available evidence to establish the allegations of his protest, except his certificate of candidacy, and

thereafter announced that he rested his case. Thereupon, petitioner herein as respondent in the said election case, instead of producing evidence, filed a second motion for dismissal on the ground that the protestant Procopio Hilario failed to submit evidence showing the truth of his allegation that he was a registered candidate.

After hearing the parties and considering the reasons set out in their memoranda in support of their respective contentions, to wit, according to the protestee Arsenio Lugay, that the dismissal should be granted because the protestant did not adduce evidence to show that he was really a duly registered candidate, and, according to the latter, that the dismissal did not lie because his protest was duly sworn to and protestee never denied that he was really a registered candidate, the court again denied petitioner's motion for dismissal by resolution to that effect dated March 23, 1938 wherein it held that the jurisdictional allegations appearing in the sworn protest of the respondent Procopio Hilario which are not denied by the protestee, petitioner herein, established prima facie a sufficient cause justifying and conferring upon the court, by virtue of its acquired jurisdiction, authority to continue hearing the protest.

- The facts alleged in an election protest, complaint or information, and not those proved during the trial, determine whether or not the court wherein the pleading is filed has jurisdiction to entertain the case. Although the law requires that election protests may be heard only at the instance of candidates voted for at the election who have duly filed their certificates of candidacy, it is a fact admitted by the parties in the instant case that in the protest under discussion the foregoing requirement of the law has been substantially complied with, because of the express allegation therein made that petitioner Procopio Hilario who was the protestant, "was a registered candidate voted for the office of mayor of Tarlac". The phrase "that he has duly filed his candidacy" is not an indispensable condition to the sufficiency of an election protest nor its use verbatim therein a condition sine qua non to the conferring of jurisdiction upon the court to take cognizance of the protest, because the presumption of the law is that what has been done has been performed in accordance with the ordinary course of things and in strict compliance with the law (sec. 334, Nos. 26 and 31, of the Code of Civil Procedure). This becomes all the more clear from the fact, appearing in the sworn protest of Procopio Hilario, the respondent, that 1,387 votes were received by, and adjudicated to, him as candidate for mayor of Tarlac as against 2,053 votes adjudicated to the petitioner, which put respondent in second place. If he had not filed his certificate of candidacy in accordance with law, the election inspectors, far from crediting him as they did with 1,387 votes, would have considered the same as scattering votes in view of the imperative mandate of the law to this effect.

"Votes for persons who have not filed certificates of candidacy for any office shall be counted in the count of votes as scattering votes." (Sec. 464 of the Revised Administrative Code as amended by Act No. 3387.)

No doubt, therefore, exists that the written protest in question contains sufficient allegations to confer jurisdiction on the respondent judge.

- The question of whether the respondent judge lost the jurisdiction he had acquired by virtue of the written protest, to continue taking cognizance thereof, because of the failure of respondent Procopio Hilario as protestant to prove during the trial that he was a registered candidate voted for the office of mayor of Tarlac, does not have the importance given to it by petitioner because the lack of denial under oath, on his part, of the allegation in question, the protest having been in fact sworn to, not only relieved the protestant, that is to say, Procopio Hilario, from presenting evidence to sustain the same, but also gave reason to believe that it was true, unless the contrary is shown. The ruling in the case of *Noble vs. Tuason and Peñoso* (48 Phil., 387), is perfectly applicable to the present. The subtle distinction made between one and the other case disappears completely in the light of the fact that the parties, namely, the petitioner and the respondent Procopio Hilario, after the denial of the first motion for dismissal filed by the former, decided to proceed with the trial in the course of which documents showing that respondent was in fact voted for the office of municipal mayor of Tarlac, Tarlac, were presented. Under such

circumstances it can not be said that the court acted irregularly in denying the dismissal prayed for, because the public interest would and does require that the trial be held and continued until the final determination of the question of whether the elections in which petitioner claims to have been legally and validly elected were conducted in accordance with law or whether in his election violations of law, frauds and irregularities were committed.

In view of all the foregoing, the petition is hereby denied, with the costs of this proceeding against the petitioner. So ordered.

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

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