

**NICANOR GUNDAN, FELIPE ALANSIGAN, AND JUAN PINGAD,
PETITIONERS, VS. THE COURT OF FIRST INSTANCE OF CAGAYAN,
MARCELO JURADO, VICENTE GUNDAN, LUIS GOROSPE, AND
RAYMUNDO GUNDAN, RE...**

G.R. No. 46098. August 29, 1938

Ponente: IMPERIAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-46098/>

IMPERIAL, J.:

The petitioners and the respondents were candidates for councilors in the elections held on December 14, 1937, in the municipality of Rizal, Province of Cagayan. After canvassing the votes, the municipal council of Rizal, acting as a board of canvassers, certified that the said candidates received the following number of votes: Marcelo Jurado 292; Vicente Gundan 261; Luis Gorospe 261; Raymundo Gundan 245; Nicanor Gundan 234; Felipe Alansigan 226; and Juan Pingad 193, and proclaimed the first four abovenamed, that is, the respondents, councilors duly elected for having obtained a plurality of votes. Within the period provided by law the petitioners protested against the election of the respondents and in the motion protest which they filed in the Court of First Instance of Cagayan they alleged that in the election precincts 1, 2 and 3 of the municipality of Rizal, irregularities were committed consisting in the adjudication by the boards of canvassers to the respondents of a greater number of votes than that really obtained by them, as a result of which the said respondents, instead of the petitioners, were illegally proclaimed elected. In their answer the respondents denied the irregularities alleged in the protest and interposed a counter-protest wherein they alleged that in precincts 2 and 3 irregularities had been committed to favor the petitioners and that the latter obtained a greater number of votes than that which they had really received from the voters according to the ballots that had been deposited in the ballot boxes; they also alleged that they received a greater number of votes than that which had been adjudicated to them by the boards of canvassers. The hearing of the protest was set by the court on March 24, 1938. On the 17th of the same month the respondents filed a motion to dismiss the protest on the ground that the petitioners had not duly presented their certificates of candidacy, wherefore, they had no standing to file the protest and the court was likewise without jurisdiction to take cognizance thereof. On the 21st of the same month the respondents filed an amended motion for dismissal alleging the same grounds and attaching thereto certified copies of the certificates of candidacy of the petitioners wherein it appears that the latter had not verified the said certificates. On the same date the court entered a resolution dismissing the protest, with the costs to the petitioners, on the ground that it had not acquired jurisdiction because the petitioners' respective certificates of candidacy were not verified, and adding that for this reason the petitioners were without standing to institute the protest. The petitioners excepted to the resolution and on April 11 of the same year they filed this petition for mandamus to compel the respondent court to go forward with the protest and thereafter to decide the same as the facts and the law warrant.

It is argued that the petitioners have no standing to institute and prosecute the protest because they did not swear to their certificates of candidacy and that because of this failure the court has no jurisdiction to hear the protest, in accordance with the provisions of section 479 of the Revised Administrative Code, as last amended, providing

that an election protest must be commenced by the filing of a motion by the candidate voted for who had duly presented his certificate of candidacy. In support of this theory is cited the decision of this court in *Viola vs. Court of First Instance of Camarines Sur and Adolfo* (47 Phil., 849), wherein it was said that one of the conditions required by section 479 of the Revised Administrative Code, as amended, which is necessary to confer jurisdiction upon the court, is that the protestant has duly filed a certificate of candidacy. In that case, however, the question now raised of whether a certificate of candidacy may be considered valid after the election when it has not been duly verified by the candidate, was neither squarely discussed nor resolved. This question was directly considered and resolved in the case of *De Guzman vs. Provincial Board of Canvassers of La Union and Lucero* (48 Phil., 211), wherein it was held that a certificate of candidacy which has not been duly sworn to by a candidate is valid because the provisions of section 404 of the Revised Administrative Code, as amended, while mandatory before the election are merely directory after such election and it is not just to nullify the will of the electorate by purely technical reasons. It is true that in the present case the petitioners were not the proclaimed councilors-elect, but the rule which this court took into account in laying down the doctrine in the *De Guzman* case subsists because if we invalidate the votes received by the petitioners, the will of the voters who cast said votes would be completely nullified. Moreover, if after examining the ballots questioned by the protest and counter-protest it should appear that the petitioners have obtained a plurality of votes over the respondents, then we would have the same case of *De Guzman* and we would have to annul the election of the petitioners just because their certificates of candidacy have not been duly sworn to according to law. In the *De Guzman* case, *supra*, we said: "We hold that the legal provision here in question is mandatory and noncompliance therewith before the election would have been fatal to the recognition of the status of Juan T. Lucero as candidate. But after the people have expressed their will honestly, the result of the election cannot be defeated by the fact that the respondent who was certified by the provincial secretary to be a legal candidate for the office of provincial governor has not sworn to his certificate of candidacy. The situation is somewhat like that of a voter placing his ballot in the box. There are certain requirements of the law, affecting the vote, which have been considered by this court as of a mandatory character until the ballot is placed in the ballot box; but we have held that the validity of the count cannot be questioned, nor the vote stricken out after the ballots had been placed in the ballot boxes, simply for noncompliance with such provisions. After the termination of the election, public interest must be made to prevail over that of the defeated candidate, and we cannot declare that the election of the respondent Juan T. Lucero was illegal, and that he should quit the office for which he was elected. simply by reason of a defect in his certificate of candidacy. which defect could have been corrected before the election, but which cannot be cured after its termination. and after the result of the election was published by the provincial board of canvassers, respondent herein." In view of the doctrine enunciated in the *De Guzman* case. which we believe perfectly applicable to the case at bar, we hold that the lack of a sworn statement in the certificates of candidacy of the petitioners cannot be invoked by the respondents as a ground to prevent them from prosecuting the protest which they have commenced, nor does the defect deprive the respondent court of the jurisdiction which it has acquired by virtue of the protest filed in due time and form.

In view of the foregoing, the remedy applied for is granted, the resolution of March 21, 1938, is set aside, the election protest commenced by the petitioners is restored, and the judge presiding over the Court of First Instance of Cagayan is ordered to hear the same and thereafter render judgment called for by the facts and the law, with the costs to the respondents Marcelo Jurado, Vicente Gundan, Luis Gorospe and Raymundo Gundan. So ordered.

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

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.