

ROBERTO A. YAP, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF ZAMBALES AND PEDRO EBALO, RESPONDENTS.*G.R. No. 46117. August 15, 1938*

Ponente: VILLA-REAL, J.

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In the general elections held on December 14, 1937, in the municipality of Candelaria, Province of Zambales, the petitioner Roberto A. Yap and the respondent Pedro Ebalo were candidates for the position of vice-mayor. After the canvassing was made, it was found that each of said candidates had obtained 350 votes.

On December 17, 1937, the municipal council of Candelaria, acting as a municipal board of canvassers, proclaimed, by resolution No. 56, the herein petitioner Roberto A. Yap, vice-mayor elect of said municipality.

Upon being notified of the proclamation, the respondent complained of the act of the municipal council of Candelaria before the Secretary of the Interior who, by telegram of December 22, 1937, ordered the provincial governor of Zambales to require the said municipal council of Candelaria to comply with the provisions of section 477 of the Election Law and to make the candidates who tied draw lots. In compliance with said order, the provincial governor of Zambales required the municipal council of Candelaria to undertake the drawing of lots for the purpose of determining who should be declared elected to the position of vice-mayor of said municipality.

On December 26, 1937, the respondent Pedro Ebalo notified the municipal council of Candelaria that he would be present at the drawing of lots, with the advice, however, that should the result thereof be against him, he would file the corresponding protest with the competent court.

On December 27, 1937, the municipal council of Candelaria met in session and adopted resolution No. 62 ratifying the proclamation made on December 17, 1937 in favor of the petitioner Roberto A. Yap as vice-mayor elect of Candelaria, Zambales.

On December 28, 1937, the municipal council of Candelaria again met in session and adopted resolution No. 63 revoking the proclamation of Roberto A. Yap as vice-mayor elect of Candelaria.

On December 30, 1937, the petitioner Roberto A. Yap and the respondent Pedro Ebalo were notified to appear before the municipal board of canvassers in order to resolve the tie, signing a paper whereby they agreed to submit to the drawing of lots. After the drawing of lots and the same having resulted in favor of the petitioner Roberto A. Yap, the latter was for the second time proclaimed vice-mayor elect of Candelaria.

On January 4, 1938, the respondent Pedro Ebalo filed in civil case No. 946 of the Court of First Instance of Zambales a motion protest questioning the election of the petitioner Roberto A. Yap as vice-mayor of Candelaria, alleging that frauds and irregularities were committed in precinct No. 2 of the aforesaid municipality.

On February 19, 1938, the petitioner Roberto A. Yap, as protestee in said election protest No. 946, filed a motion asking for the dismissal of the protest on two grounds, namely: (1) that the court lacked jurisdiction to take

cognizance of the election protest because it was filed more than two weeks after the proclamation of Roberto A. Yap as vice-mayor of the municipality of Candelaria, which took place on December 17, 1937; and (2) that granting, without admitting, that the second proclamation of Roberto A. Yap as vice-mayor elect of the municipality of Candelaria, made on December 30, 1937, were legal, there is no reason to protest because having voluntarily submitted himself to the drawing of lots to resolve the tie, the respondent Pedro Ebalo is estopped from questioning the validity of the election result.

On March 5, 1938, the Court of First Instance of Zambales, then presided over by the Honorable E. Araneta Diaz, judge, after the corresponding trial, issued an order denying said motion for dismissal. The herein petitioner and therein protestee Roberto A. Yap excepted to this order on March 17, 1938.

On April 9, 1938, the Court of First Instance of Zambales, then presided over by the Honorable M. L. de la Rosa, judge, ordered the opening of the ballot boxes of precinct No. 2 of the municipality of Candelaria and the counting of the ballots contained therein, appointing the interpreter of the court as sole commissioner for said purpose.

On April 11, 1938, after the commissioner had submitted his report, the Court of First Instance of Zambales entered a decision declaring the respondent Pedro Ebalo vice-mayor elect of Candelaria, Zambales, with a plurality of eleven (11) votes over the petitioner Roberto A. Yap, who duly excepted to said decision.

The first question to decide in the present petition is whether or not the Court of First Instance of Zambales acted without jurisdiction in taking cognizance of civil case No. 946, entitled "Pedro Ebalo vs. Roberto A. Yap, et al."

The petitioner alleges that when the motion protest was filed on January 4, 1938, more than two weeks had already elapsed from the time the municipal board of canvassers made on December 17, 1937 the first proclamation of the elected municipal officers, and that the second proclamation of the vice-mayor elect of Candelaria, made by the said board on December 30, 1937 was null and void because it was made without any order from a competent court.

For not complying with the mandate of section 477 of the Election Law, in not resolving the tie between the petitioner and the respondent for the position of municipal vice-mayor by drawing lots, the proclamation made by the municipal board of canvassers in favor of the petitioner Roberto A. Yap as vice-mayor of Candelaria on December 17, 1937 was illegal and void. On the other hand, that made on December 30, 1937, as a result of the drawing of lots made on the same date, upon notice to the candidates who tied, was legal and valid. There was no need for the competent court to annul the proclamation made on December 17, 1937, for it being void because made in violation of law, it did not have any legal effect, nor did it put an end to the proceeding of the municipal board of canvassers which is terminated only after it has complied with the duty imposed upon it by law. Hence, in setting aside the proclamation illegally made on December 17, 1937, and in the new proclamation of the 30th of the same month and year, in accordance with law, the municipal board of canvassers acted within its powers. The doctrine enunciated in the case of *Cordero vs. Judge of First Instance of Rizal* (40 Phil., 246), is not applicable to the present case, because in that case the municipal board of canvassers acted in accordance with law in making the proclamation of the candidates who had obtained the greatest number of votes and it had no power to amend said proclamation and add the names of other candidates who had received votes after having made the final certification of the result of the canvassing.

Now, then, if the proclamation made on December 17, 1937, declaring the petitioner Roberto A. Yap candidate elect to the position of vice-mayor of Candelaria, was void because made without first complying with the provision of section 477 of the Election Law aforecited, and, consequently, did not have any legal effect, the said date cannot be considered the starting point in counting the two weeks within Which section 479 of the Election

Law requires the filing of election protests. It is certainly not the intention of the legislator to make the two weeks within which to file the protest commence to run from the date of any proclamation, whether legal or illegal. From the foregoing it follows that, the proclamation made on December 30, 1937, declaring the petitioner Roberto A. Yap candidate elect to the position of vice-mayor of Candelaria, being the legal and valid one, the two weeks fixed by law within which election protests should be filed should be counted from the aforesaid proclamation. The protest of the respondent Pedro Ebalo having been filed on January 4, 1938, that is, five days after making the legal and valid proclamation, which took place on December 30, 1937, the same was filed within the period provided by law, and the Court of First Instance of Zambales acquired jurisdiction to take cognizance of and decide the same.

The fact that the respondent submitted himself to the drawing of lots on December 30, 1937, did not estop him from questioning the result of the election on the ground of fraud committed in said election, because when he submitted himself to the said drawing of lots, he stated that if the result should be against him he would file the corresponding protest before the competent court. Moreover, the respondent could not do away with the drawing of lots, as the same is required by law and without it the winner and the loser can not be determined.

In view of the considerations just stated, we are of the opinion and so hold: (1) that the proclamation made by the municipal board of canvassers, declaring elected a candidate who has tied with another in the voting, without drawing lots to determine the tie, is illegal and void and cannot be made the starting point in counting the two weeks within which an election protest should be filed; (2) that a municipal board, acting as a board of canvassers, which makes an illegal proclamation of a candidate who has tied with another in the voting, because of failure to draw lots to determine the tie, does not need any order of the court to set aside said proclamation, to proceed to the drawing of lots, and to make a new proclamation in accordance with law; and (3) that a candidate who has tied with another and who submits himself to the drawing of lots, stating that if the result of the said drawing of lots should be adverse to him, he would file a protest before a competent court, is not estopped from doing so.

Wherefore, finding no merit in the petition for certiorari, the same is denied, with the costs to the petitioner. So ordered.

Avanceña, C. J., Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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