

PLACIDO ROSAL, PETITIONER, VS. DIONISIO FORONDA, ANTONIO ORDAS, AND FUNDADOR VARILLA, RESPONDENTS.*G.R. No. 46133. November 29, 1938*

Ponente: IMPERIAL, J.

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As a result of the election for the office of mayor held on December 14, 1937 in the municipality of Buguey, Province of Cagayan, Placido Rosal, the petitioner, received 608 votes, Dionisio Foronda 672 votes, Antonio Ordas 443 votes and Fundador Varilla 234 votes, respectively. Consequently the respondent Dionisio Foronda was proclaimed mayor elect of said municipality on December 16, 1937 by the municipal council of Buguey, acting as a board of canvassers. Placido Rosal contested the election of Dionisio Foronda, including as respondents the other candidates who received votes, and in the motion filed by him it was alleged that frauds and irregularities were committed in precincts 4, 6 and 7 and that if the votes cast for the office of mayor were recounted he would be elected with a plurality of votes over his opponents. The respondent answered the motion of protest, denying under oath the allegations therein, and in turn interposed a counter-protest wherein it was alleged that frauds and irregularities were also committed in precincts 1 and 5, and that if the votes were recounted his plurality over the petitioner would be increased, so that his election should be confirmed. The trial court set the case for hearing on February 15, 1938 and on said date appointed as commissioners for the revision of votes the attorneys for both the petitioner and the respondent. Said commissioners reopened the ballot boxes of precinct No. 4 and on February 17, 1938 submitted their written memorandum. The trial of February 15, 1938 was held in Aparri and its continuance was set for March 22d of the same year at Tuguegarao. On this latter date the parties appeared before the court with their respective counsel and the petitioner through his counsel asked that the hearing of the case be transferred to some other date and that it be held in Aparri instead of Tuguegarao, on the ground that some seventy-five witnesses were to testify for the petitioner and that to bring them to Tuguegarao would cause the petitioner considerable and unnecessary expense. The attorneys for the respondent objected to said petition on the ground that the petitioner had been duly notified of the continuation of the hearing and that the respondent was then ready to enter into trial, having brought with him fifteen witnesses who were then present in court. After hearing the counsel for both parties the trial judge denied the petition and, as counsel for the petitioner could not adduce any evidence, definitely dismissed the case, without costs, but with the expenses theretofore incurred to be charged against said petitioner. The latter appealed from the order thus issued.

It is alleged by the petitioner that the trial court erred in refusing to postpone the hearing of the case and to transfer it to Aparri, and in dismissing definitely said case without giving him the opportunity to be heard and to present his evidence.

The trial court was justified and it did not exceed the exercise of the discretion conferred upon it by law when it proceeded with the trial and prompt disposal of the case because section 479 of the Revised Administrative Code, as amended by Act No. 3834, which was then in force, provides that election protests must be terminated and decided within one year from the filing thereof (*Portillo vs. Salvani*, 54 Phil, 543). According to section 154 of the

Revised Administrative Code, as amended by section 2 of Commonwealth Act No. 145, the judge which took cognizance of said protest had his permanent residence in the Province of Cagayan, the capital of which is Tuguegarao. Section 161 of said Code, as amended by section 4 of Act No. 145, provides that the Court of First Instance of Cagayan shall hold sessions in Aparri yearly on the first Tuesday of January. Except during this period the court shall divide its time for holding sessions between the other places fixed by law, including the capital of the province. Had the court postponed the trial of February 15th for the purpose of holding it in Aparri on March 22, 1938, it would have disregarded the law and employed part of its time for holding sessions in the capital and in the municipalities of Abulog and Tuao. This was undoubtedly the other reason which the trial court took into consideration in denying the postponement of the trial and holding the same in Aparri. When the case was called for hearing for the first time on February 15, 1938 the ballot boxes in precinct No. 4 were opened and the commissioners for the revision of votes were appointed, one of them being the attorney for the petitioner, said attorney being notified that the hearing would be continued on the 22d day of the next month and that then the parties could present all the evidence they desire to present. In election cases the parties and their attorneys should cooperate with the court in the prompt disposal of the same because the law directs that said cases be decided within one year. If the petitioner and his attorney desired to cooperate with the court they would have brought along their witnesses to Tuguegarao, or had they wished to save expenses, they would have taken the deposition of said witnesses for presentation at the trial.

With respect to the last assignment of error, it seems to us evident that the trial court did not err in finally dismissing the protest. The petitioner cannot complain that he was unable to present his evidence because he was given ample opportunity to do so. With a little diligence and without extraordinary effort he could have presented all his witnesses or in lieu thereof their depositions, for the taking of which there was sufficient and reasonable time.

The trial court not having committed any of the errors assigned, the order appealed from is hereby affirmed, with the costs of this instance against the petitioner. So ordered.

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

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