

GERONIMO SANTIAGO, PETITIONER, VS. HERMENEGILDO ATIENZA AND MANUEL DE LA FUENTE, RESPONDENTS.

G.R. No. 46375. November 02, 1938

Ponente: LAUREL, J.

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LAUREL, J.:

This is a petition for a writ of mandamus to compel the respondent Hermenegildo Atienza as president of the municipal board of the City of Manila to appoint an inspector of election for the Partido Socialista in each and every precinct of the North Assembly District of Manila. The petitioner is Geronimo Santiago, president of the Partido Socialista. The other respondent, Manuel de la Fuente, is said to be the president of the seceding Partido Democrata to which, it is alleged, the minority inspector was granted by the respondent Atienza.

The petitioner alleges that the Partido Socialista is "a duly organized political group, existing since June 20, 1935"; that in the election held in the City of Manila on September 17, 1935, Segundo Agustin was the official candidate of that party and obtained third place; that Gregorio Perfecto and Engracio Clemeña who obtained first and second places, respectively, both belong to the party resulting from the fusion of the Nacionalista Pros and Antis and the Democrata Pros and Antis; that because of the fusion, the respondent Manuel de la Fuente formed a separate political organization of seceding democratas; that on September 19, 1938, the third inspector which should correspond to the Partido Socialista was granted by the president of the municipal board to the organization headed by the respondent Manuel de la Fuente; that this action of the president of the municipal board is in violation of section 72 of the Commonwealth Act No. 357 which prohibits the granting of inspectors of election "to any branch or fraction which has seceded from its respective party, or from the party resulting from their fusion"; and that the Partido Socialista, represented by the petitioner, is the party entitled to the minority election inspector.

The respondents filed separate answers to the petition. In the answer of the respondent Manuel de la Fuente, it is averred that the third election inspector for the coming November election in the North District of Manila was granted not to the Partido Democrata, but to the Alianza Democratica which is an alliance of the Radical, Frente Popular and Democrata parties; that the Partido Radical which was founded on November 15, 1930, and which is one of the three component parties of the Alianza Democratica, is the oldest opposition party in the City of Manila, that the Partido Socialista was organized only on June 20, 1935; that the Partido Socialista does not have any candidate of its own in the North District of Manila in the coming November election; and that the Partido Socialista headed by the petitioner Geronimo Santiago is a member of the Frente Popular which is in turn a party-member of the Alianza Democratica; and that, therefore, the socialistas are already represented by the third election inspector accorded the Alianza Democratica.

In his answer, the respondent Hermenegildo Atienza denies having granted the third inspector to the party of the respondent Manuel de la Fuente, stating that after he had signed a resolution appointing said inspector from the list submitted by Manuel de la Fuente, the latter withdrew his list in favor of the list submitted by Alfonso Mendoza representing the Alianza Democrata—; that representation was made that Pascual Santos was to be the

official candidate of the alliance in the north district and that for the purpose of the Electoral Code said Pascual Santos was also to represent the Partido Radical in the north district; and that in granting the inspector to the Alianza Democrata-Radical he was acting in accordance with the provision of the Electoral Code.

Although some important facts are controverted, which should ordinarily be proved or clarified before proceeding to the determination of the conflicting claims of the parties, the urgent nature of the controversy demands its expeditious settlement. Without indulging in an extensive discussion as regards the purposes of political representation on the boards of election inspectors under our Electoral System, it may be stated as a general proposition that what is fundamentally important, in the interest of purity of elections, is that the minority or opposition party be properly represented on the boards. To this end, elaborate provisions have been inserted in the Election Code regarding the constitution of said boards, the appointment of their members and the intervention of the political parties therein. In the present case, there is no controversy as regards the right of the majority party to the two inspectors. Neither is the right of the opposition party to representation on the boards disputed. The issue is: Which of the two contending opposition parties is entitled to this representation?

Section 71 of the Election Code, which was approved and took effect on August 22, 1938, except as to the matter indicated in section 186 thereof, provides as follows:

"In case the two-major parties unite.—In case the parties which polled the largest and the next largest number of votes at the next preceding election present only one candidate for each office, the other inspector shall belong to the party of the opposing candidate, and should there be more than one opposing party presenting a candidate, said inspector shall belong to the party first organized in the locality."

The foregoing provision concedes the third inspector of election "to the party of the opposing candidate, and should there be more than one opposing party presenting a candidate, said inspector shall belong to the party first organized in the locality." In other words, the right to the third inspector of election is predicated on the existence of the opposing candidate in the impending election. Whether this condition is wise or unwise, expedient or inexpedient, is not for us to say. The wisdom and expediency of legislation is a matter which should be passed upon and determined by the coordinate department of the Government. It does not appear from the petition that the Partido Socialista has presented a candidate for Assemblyman in the North District of Manila. On the contrary, it is stated in the answer of the respondent De la Fuente "that the Partido Socialista does not have any candidate of its own in the North District of the City of Manila in the coming November elections." This is admitted by the petitioner in paragraph 6 of his replica. The petition, therefore, fails to establish his legal right to political representation of the boards of inspectors. As mandamus does not lie except where the petitioner has a clear legal right to the thing demanded and as the remedy never issues in doubtful cases (*Tabigue vs. Duvall*, 16 Phil., 324; *Ynchausti Steamship Co. vs. Dexter and Unson*, 41 Phil., 289), the petition is hereby denied with costs against the petitioner. So ordered.

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

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