

RODOLFO “ROD” RIVERA, PETITIONER, VS. JUDGE WILLELMO C. FORTUN, COURT OF FIRST INSTANCE OF PANGASINAN, DAGUPAN CITY BRANCH 12; JUDGE SERGIO I. GARCIA, 4TH MUNICIPAL CIRCUIT COUR...

G.R. No. 62097. July 25, 1983

Ponente: AQUINO, J.

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AQUINO, J.:

This is a protest against the election on May 17, 1982 of the barangay captain for Barangay Poblacion, San Fabian, Pangasinan, where, according to the certificate of canvass, the following candidates obtained the following votes:

Ildefonso Gonzalo 401

Rodolfo "Rod" Rivera 399

F. Ulanday 346

F. Rioflorido 280

On the following day, May 18, the Chairman of the barangay board of canvassers signed the certificate of proclamation of Gonzalo as the duly elected barangay captain. Nine days later, or on May 27, the other two members of the barangay board of canvassers signed the certificate of proclamation. Gonzalo took his oath as barangay captain on June 7, 1982.

On May 28, 1982, Rodolfo Rivera, who placed second, filed a protest in the municipal circuit court of San Fabian against Gonzalo's proclamation on the grounds (1) that the certificate of proclamation was not signed by the other two members of the board of canvassers; (2) that there were irregularities in voting centers Nos. 19-A, 19-B and 19-C and (3) that proper counting of the valid votes would have resulted in an increase of Rivera's votes by thirty votes.

In its orders of June 15 and 18, 1982 the municipal circuit court dismissed Rivera's protest for lack of jurisdiction because the certificate of proclamation was signed only by the chairman of the board of canvassers.

After the denial of his motion for reconsideration, Rivera filed certiorari and mandamus proceedings in the Court of First Instance. In his decision dated August 26, 1982, Judge Willelmo C. Fortun affirmed the municipal circuit court's order of dismissal. Rivera brought the case to this Court.

The Commission on Elections, which through the Solicitor General acted as amicus curiae in this proceeding, opined that the municipal circuit court has jurisdiction over the protest and it erred in issuing the dismissal order.

Although protestee Gonzalo did not raise the jurisdictional issue in his answer, yet at the initial hearing, he contended that the court did not have jurisdiction over the case because protestant. Rivera alleged that Gonzalo

was not validly proclaimed.

Gonzalo admits that the municipal circuit court has jurisdiction over the case but he argues that the petition or protest "was fatally defective in that there was failure to allege that the protestee had been validly proclaimed." (pp. 92-93, Rollo).

There is no question that Rivera alleged in his protest that Gonzalo was proclaimed as the duly elected barangay captain. He merely incidentally assails the legality of the proclamation.

We hold that that circumstance does not deprive the municipal circuit court of jurisdiction over the petition wherein the principal allegations were the commission of serious irregularities in three voting centers. Basically, the case is an electoral protest.

WHEREFORE, the decision of Judge Fortun and the orders of the municipal court, dismissing the case, are reversed and set aside. The municipal circuit court should continue to hear the case. Costs against respondent Gonzalo.

SO ORDERED.

Makasiar (Chairman), Concepcion Jr., Abad Santos and Escolin, JJ., concur.
Guerrero and De Castro, JJ., on leave.

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