

43 Phil. 795

[ G. R. No. 19378. September 22, 1922 ]

**FRANCISCO FERRER, PETITIONER, VS. EDUARDO GUTIERREZ DAVID, JUDGE OF FIRST INSTANCE OF THE TWENTIETH JUDICIAL DISTRICT, AND EUGENIO LUCOT, RESPONDENTS.**

**D E C I S I O N**

**VILLAMOR, J.:**

The present action of certiorari and prohibition was originally commenced in this court for the purpose of asking (*a*) that an order be issued to bring up the proceedings and original records of case No. 2659 of the Court of First Instance of Occidental Negros, entitled Eugenio Lucot, petitioner, vs. Francisco Ferrer and Juan Infante, respondents; (*b*) that the bond accompanying the petition be accepted and approved and that a preliminary injunction be issued directed to the respondent judge enjoining him from further proceeding with the decision upon its merits of the motion filed by the respondent, Eugenio Lucot, in the aforesaid case No. 2659 and that another injunction be issued to Eugenio Lucot prohibiting him, his agent or attorney, to proceed with the hearing and the decision of the said special motion upon its merits; (*c*) that this court declare that the Court of First Instance of Occidental Negros, presided over by the respondent judge or any judge in the solution upon the merits of the special motion, is without jurisdiction to hear and try the said motion on its merits; and (*d*) that petitioner be granted any other legal remedy and that the respondents be sentenced to pay the costs of the present action.

The petitioner, Ferrer, one of the protestees in the municipal protest in question, alleges as the only basis for his petition that in the special motion of respondent Lucot, there is no allegation that the municipal council of Escalante, Occidental Negros, had ever convened and acted as a municipal board of canvassers as provided in section 477 of the Election Law.

The motion of protest that petitioner is attacking follows:

“Eugenio Lucot, the petitioner, by his undersigned counsel to the court respectfully shows:

“(1) That he and the respondents Juan Infante and Francisco Ferrer are, and were on June 6, 1922, duly qualified electors (voters) of, and residing in, the municipality of Escalante, Province of Occidental Negros.

“(2) That the petitioner and the respondent, on June 6, 1922, were the only registered and voted candidates for the office of municipal president in the said municipality of Escalante, Occidental Negros.

“(3) That *after* the elections of that day, June 6, 1922, and when the time came for the canvassing of the votes, the chairmen of the boards of inspectors of precincts B (Washington) and E (Toboso) of the municipality of Escalante, Occidental Negros, notwithstanding the objections and protests against their proceedings, did intentionally and maliciously read the name of Francisco Ferrer in the ballot for the office of municipal president instead of the name of the petitioner Eugenio Lucot which appeared voted for municipal president of Escalante, Occidental Negros, in at least 15 ballots of precinct B (Washington) and not less than 25 ballots in precinct E (Toboso), after the result of which there was ‘*a false and fraudulent proclamation*’ of the election of Francisco Ferrer over Eugenio Lucot for the office of municipal president of Escalante, Occidental Negros, the former winning by a majority of 11 votes (109 for Lucot and 120 for Ferrer) in precinct B; *and that it was also a false and fraudulent proclamation* of the election of Francisco Ferrer over Eugenio Lucot for the same office in the municipality of Escalante itself, with a supposed majority of 51 votes (31 for Lucot and 82 for Ferrer) ; which ‘*two results,*’ together with the result of precincts A (Poblacion), C (Buenavista) and D (Toboso also), gave a sum total contained in the election return that was falsely made, ‘according to which’ the total number of votes cast for the office of municipal president of Escalante, Occidental Negros, in the general elections of June 6, 1922, was 424 for the petitioner Eugenio Lucot, 484 for the respondent Francisco Ferrer and 26 votes for the respondent Juan Infante.

“(4) That this result as proclaimed and contained in the returns shows a majority of 60 votes in favor of the respondent Francisco Ferrer over the petitioner Eugenio Lucot, when as a matter of fact, if the names for the office of municipal

president of Escalante, Occidental Negros, appearing on the ballots pertaining to precincts D and E had been correctly read, the result would have been not less than 124 votes for Eugenio Lucot and not more than 105 votes for Francisco Ferrer in precinct B; and not less than 56 votes for Eugenio Lucot and not more than 57 for Francisco Ferrer in precinct E; which added to the result of the other precincts (?) of the municipality of Escalante would have given a total number of votes cast for Eugenio Lucot for the office of municipal president of not less than 464, and a total number of votes for Francisco Ferrer for the office of municipal president of Escalante of not more than 444 votes, that is, that in all of the precincts of Escalante, Occidental Negros, the petitioner would have obtained a majority of 20 votes over the respondent who obtained a larger number of votes than the other respondent.

“As another cause of action, the petitioner also alleges that on Friday, the 28th of April, 1922, Cornelio Durimon appeared at the electoral precinct C of Escalante to register himself as a qualified voter so as to have the right to vote, which he would have done in favor of the petitioner, Eugenio Lucot, in the general elections of June 6, 1922; but when the said Cornelio Durimon, on June 6, 1922, presented himself at said electoral precinct in order to vote for the herein petitioner and the other candidates for other insular, provincial and municipal offices, the election inspectors, who favored the candidacy of the respondent Francisco Ferrer, denied him the right to vote knowing, as they did, that the said Durimon was a voter for the petitioner Eugenio Lucot; that as the reason for their denying Durimon his right to vote, they told him that his name, Cornelio Durimon, did not appear in the voters’ list notwithstanding the fact that the oath of the said Cornelio Durimon as a duly qualified voter was on file and the further circumstance that the 1921 cedula of Cornelio Durimon had been signed by the inspector Pastor S. Contiga to the effect that the said Cornelio Durimon had been registered in the electoral list of precinct C of the municipality of Escalante, Occidental Negros, on April 28, 1922.

“(5) That if Cornelio Durimon had not been prevented from voting by the election inspectors the total number of votes obtained by the petitioner Eugenio Lucot over his contestant Francisco Ferrer would have been increased by one, that is to say a total of 21 votes in the five precincts of the said municipality.

“Wherefore petitioner prays the court, upon filing of a bond in the amount that

the court may fix and which the petitioner is ready to file at this moment if he only knows the amount thereof, and this protest being filed within the period prescribed by law:

“(1) To issue a *subpoena duces tecum* to the municipal treasurer of Escalante, Occidental Negros, P. I., to bring and present to this court, in due time, the election lists of the precincts and all the ballots and ballot boxes used in precincts B (Washington) and E (Toboso) of this municipality for the examination of the court;

“(2) To set this protest for hearing within the legal period, after summoning all the parties;

“(3) To declare Eugenio Lucot elected as the municipal president of Escalante in the general elections of June 6, 1922, and consequently to order the clerk of this court to notify the proper board of canvassers of the decision of this court, furnishing a copy of the decision to this party that he may take possession immediately of the office on or after October 16, 1922.

“Petitioner also prays that the respondents be sentenced to pay the costs and that he be granted any other remedy consistent with the result of the evidence.”

The herein petitioner, in the third paragraph of his complaint, admits that “said special motion is signed by Mr. A. P. Seva as counsel for respondent herein, Eugenio Lucot, and duly sworn to by the said Eugenio Lucot before the notary public of this province, Mr. Jose Buenaflor, on the 17th of June, 1922; and that upon the filing of the said motion special summons was issued to the herein petitioner summoning him to appear before the Court of First Instance of Occidental Negros, at 8 a. m. of July 10, 1922, for the hearing of the special motion quoted in the next preceding paragraph; with the admonition that, if he should fail to appear at the said hour and date, the herein respondent, Eugenio Lucot, shall have the right to obtain judgment by default and to obtain the remedy prayed for in the special motion in the Court of First Instance of Occidental Negros; and on June 30, 1922, the herein petitioner filed his answer to the said special motion admitting paragraphs 1 and 2 and denying each and every allegation contained in the other paragraphs of the said motion.”

On July 8, 1922, the same petitioner filed with the Court of First Instance of Occidental Negros a written petition to withdraw his answer and in its stead he presented a demurrer

on the ground that in the said motion there is no allegation to the effect that the municipal council of Escalante had convened as a municipal board of canvassers, nor that it had certified the election of the protestee, Ferrer, the herein petitioner, as municipal president of Escalante. The court rightfully overruled this demurrer, with the exception of the protestee and ordered him to file his answer, if he so desires, on or before July 28, on which day the hearing of the case was set for trial. It was then when the protestee, Ferrer, recurred to this court with these proceedings upon which the preliminary injunction was issued on July 25, 1922.

The question raised in these proceedings is whether or not the failure to allege in a municipal election protest that the municipal council had convened as a municipal board of canvassers, according to the provision of section 477 of the Election Law as amended by Act No. 3030, constitutes a defect which goes to the jurisdiction to such an extent as to deprive the proper court from taking cognizance of the case. An examination of sections 44 and 45 of Act No. 3030, amending sections 479 and 481 of the Election Law, referring to disputed elections for any office and the procedure for such cases in the court, shows the essential facts that do confer jurisdiction upon the court to hear and determine such kinds of causes, to wit: (a) That the protestant has duly registered his candidacy and has received votes in the election (Tengco vs. Jocson, p. 715, ante) ; (b) that the protestee has been proclaimed elected by the voters of the said precinct (Manalo vs. Sevilla, 24 Phil., 609) ; (c) that the motion of protest be filed within two weeks after such proclamation (Navarro vs. Veloso, 23 Phil., 625; Manalo vs. Sevilla, supra; Hontiveros vs. Altavas, 39 Phil., 226) ; (d) that all the candidates, registered and voted, in the election have been properly notified of the protest within twenty days following its filing; (e) that the notice be served by the sheriff or his deputy in the form prescribed by law, failing which that the notice be published in a paper of general circulation in the locality, or by notices posted in conspicuous places of the town as may have been ordered by the court.

Although the motion of protest above transcribed does not appear to have been drafted with the accuracy that we would like, however, there are allegations of fact such as those designated with the letters a, b, and c of the previous paragraph. It results from the said motion and from the allegations of the petitioner himself: (1) That the protestant, the protestee and one Juan Infante were the only candidates registered and voted for the office of municipal president in the said election; (2) that the result as proclaimed and contained in the returns is to the effect that the protestant Lucot obtained 424 votes, the protestee Ferrer 484 and Juan Infante 26; (3) that the protest was filed within the legal period; (4) that the protestee has been duly summoned and filed his answer which he later withdrew

and substituted with a demurrer which was overruled by the court.

With respect to the protest, we are of the opinion that the protestant has alleged the essential facts necessary to confer jurisdiction. Under the provisions of Act No. 3030 the protestant does not have to allege in his protest that all the registered and voted candidates were duly notified, as in view of the amendment introduced by that Act, it is not the protestant but the sheriff or his deputy who is bound to serve the notice and summons to the protestee and to the other registered and voted candidates (*Palisoc vs. Tamondong and Medina Cue*, p. 789, *ante*); it being probably sufficient for the protestant to make it appear in his protest that the necessary copies for the parties to be notified had been delivered to the sheriff, or to his deputy, for service. At all events, the failure to comply with the law regarding service of notice is a question of fact that may be raised by the protestee. Neither is it essential for the validity of the protest to allege, as the herein petitioner would have us believe, that the municipal council had convened as a board of canvassers, for, in the present case, the mere fact of the proclamation of the result of that election, stating the votes received by each candidate, is presumptive that the municipal council met, as it was its duty to meet, to canvass the votes and proclaim the result.

In view of all the foregoing, we conclude that the ground in support of the proceedings is untenable and therefore the petition should be, as is hereby, dismissed with costs against the petitioner. As a result thereof the preliminary injunction issued herein on July 25, 1922, is dissolved. So ordered.

*Araullo, C. J., Johnson, Street, Malcolm, Avanceña, Ostrand, Johns, and Romualdez, JJ., concur.*