

43 Phil. 789

[G. R. No. 19486. September 21, 1922]

**MARTIN PALISOC, PETITIONER, VS. FELICIANO TAMONDONG ANA JUAN
MEDINA CUE, JUDGE OF THE COURT OF FIRST INSTANCE OF THE PROVINCE OF
PANGASINAN, RESPONDENTS.**

D E C I S I O N

JOHNSON, J.:

The present is an original petition presented in this court for the writ of mandamus to compel the respondent judge to take jurisdiction of and to decide a certain election protest, which he had heretofore dismissed, for the reason that he had no jurisdiction in the premises. The facts upon which the petition is based may be stated as follows:

First. That on the 6th day of June, 1922, an election was held in the municipality of Urbiztondo, of the Province of Pangasinan, for the election of municipal officials and for other purposes; Second. That the only registered candidates voted for, for the office of municipal president, were the petitioner herein, Martin Palisoc, Feliciano Tamondong, Emiliano Barlaan, Enrico Velasquez, and Alejandro Ferrer;

Third. That after the close of said election the municipal council of the municipality of Urbiztondo, constituting the board of the election inspectors, proclaimed the said Feliciano Tamondong elected as president of said municipality;

Fourth. That on the 19th day of June, 1922, the petitioner herein, Martin Palisoc, presented a motion of protest in the Court of First Instance of the Province of Pangasinan;

Fifth. That on the 17th and 18th days of June, 1922, notice of said protest was served upon the said Emiliano Barlaan, Feliciano Tamondong, and Enrico Velasquez, and that said notice of protest was *not served by the sheriff, nor by his deputy, nor by my person representing him*. There is no proof in the record that Alejandro Ferrer was served with notice by any one;

Sixth. That later, a motion was presented in the lower court to dismiss the said motion of protest, for the reason that the lower court had no jurisdiction to hear and decide the question presented, because the notice of said protest had not been served in accordance with the requirements of the law (par. 2 of section 45 of Act No. 3030, amending section 481 of Act No. 2711) ; and

Seventh. That at the time of the hearing of said motion to dismiss the motion of protest, the parties entered into the following agreement of facts:

“The parties petitioner and respondent in the above-entitled case, by their attorneys, agree in the following: First, that on June 17, 1922, Messrs, Enrico Velasquez and Feliciano Tamondong, the herein respondent, voted candidates for the office of municipal president of Urbiztondo, each received a copy of the protest and of the notice which appear in folios 1 to 7 inclusive hereof, from one Modesto Estrada who was neither a sheriff nor deputy sheriff of said municipality; it is understood, however, that respondent Feliciano Tamondong by this agreement does not admit but on the contrary questions the sufficiency and regularity of this kind of service of notice; second, that Emiliano Barlaan, another voted candidate for the same office, also received a copy of the protest and of such notice on the 18th day of June, 1922, from the petitioner, Martin Palisoc personally, who was neither a sheriff nor deputy sheriff of said municipality; third, that the protest aforesaid was filed in this Court of First Instance of Pangasinan at 8.50 a. m. on June 19, 1922; fourth, that on June 21, 1922, the petitioner in this case filed the bond required by the law in the amount fixed by the court; fifth, that on June 20, 1922, the clerk of this court issued the notice and the summons in this case for Messrs. Feliciano Tamondong, Emiliano Barlaan, Enrico Velasquez and Alejandro Ferrer, but the said summons, which are only copies of the protest, were delivered by the deputy sheriff, Mr. Deogracias Mamarial, to the said parties on July 14, 1922, with the exception of Enrico Velasquez who received said summons together with the copy of the protest on July 15, 1922; and sixth, that prior to the said date, July 20, 1922, none of the aforesaid Feliciano Tamondong, Emiliano Barlaan, Enrico Velasquez and Alejandro Ferrer had appeared in this case in this court either by himself or by counsel.”

From said agreement it will be seen (a) that the notice of protest was served upon Enrico Velasquez, Feliciano Tamondong, and Emiliano Barlaan by persons who were neither the sheriff nor deputy sheriff, and (b) that the notice of the motion of protest was served upon Feliciano Tamondong, Emiliano Barlaan, and Alejandro Ferrer by a delegate of the sheriff on the 14th day of July, 1922, and upon Enrico Velasquez by the same person on the 15th day of July, 1922. It will be further noted from said agreement that none of the protestees Feliciano Tamondong, Emiliano Barlaan, Enrico Velasquez, and Alejandro Ferrer, appeared for himself or by an attorney in court until the 20th day of July, 1922. No pretension is made by the petitioner herein that the service of the motion of protest was made in any other manner, nor at any other time than that specified in said agreement.

Said paragraph 2 of section 45 provides that: "The aforesaid notice (motion of protest) shall be served by delivery by the *sheriff* of a copy of the summons and the contest to *each* of the registered candidates voted for personally, or in case of their not being found, by leaving such copies at their usual place of residence, in the hands of some person resident therein and of sufficient discretion to receive the same; such notice shall be considered as having been served if the acknowledgment of the service made as hereinbefore prescribed shall appear on the back of the summons."

From an examination of the first Election Law, adopted in January, 1907 (Act No. 1582), as well as all of the amendments thereto (Acts Nos. 2170, 2657, and 2711), it will be found that they provided that "All proceedings under this section (section 27, Act No. 1582), shall be upon motion *with notice* of not to exceed twenty days," but said various acts contained no provision concerning the *method* of giving such notice. That provision of law continued in force, and all of the amendments from January 9, 1907, to March 9, 1922, when the amendment above quoted was made. The first paragraph of section 45 of Act No. 3030 provided that; "Proceedings for the judicial contest of an election shall be upon motion *with notice* of not to exceed twenty days, etc." Paragraph 2, however, of said section provides that said notice shall be served by the sheriff. The fact that the Legislature permitted the original method of giving notice to remain in force for a period of more than fifteen years, and then amended it by *providing the person by whom* the notice shall be given, is, in our judgment, very significant. The Legislature permitted the original provisions to continue for a time sufficient to enable it to determine whether it was wise or not. The Legislature evidently believed that the method of giving notice under the former laws was not satisfactory, and therefore amended the law as above indicated.

The Courts of First Instance in election protest cases are courts of special jurisdiction, and

the Legislature has full power and authority to provide the various steps and methods by which said courts acquire jurisdiction in the premises. Service of notice, petition, or any other initial paper in a contested election case, is a matter wholly regulated by statute and the general rule is, that the statutory requirements must be strictly complied with and that the return of the officer must show such compliance before the court acquires jurisdiction to hear and determine the question presented by the motion of protest. (20 Corpus Juris, 218; Hannah vs. Green, 143 Cal., 19; Gonzales vs. Gallegos, 10 New Mex., 372; Mayfield vs. Miles, 266 111., 186; Ramsey vs. Huck, 267 Mo., 333.)

It might be argued, however, that inasmuch as the respondents or protestees were notified by the sheriff of the said motion of protest on the 14th and 15th days of July (as per agreement), that the court thereby acquired jurisdiction. It will be remembered, however, that the motion of protest was presented on the 19th day of June, 1922, and that the law requires that the notice of said motion shall be given within a period "*not to exceed twenty days* to all registered candidates voted for" from the time of the filing of the motion of protest. Counting twenty days from the 19th day of June, 1922, it will be seen that the twenty days within which the notice should have been given, expired on the 10th day of July. Therefore, the notice given on the 14th and 15th days of July was not given within the twenty days required by the law. (Par. 1, section 45, Act No. 3030.)

We have held in numerous decisions that if the notice of the motion of protest is not given within a period of twenty days from the time of the filing of the same, the court acquired no jurisdiction to hear and determine said motion. The service of the notice of protest upon all of the registered candidates voted for, as required by law, is one of the steps necessary to give the court jurisdiction to proceed. (Navarro vs. Veloso, 23 Phil., 625; Topacio vs. Paredes, 23 Phil., 238; Navarro vs. Jimenez, 23 Phil., 557; Ocampo vs. Mina and Arejola, 41 Phil., 880, 884, 885.)

From all of the foregoing it clearly appears that the protestees were not served with the notice of the motion of protest in the manner prescribed, nor within the period required by the law; and, inasmuch as a compliance with the law in both regards is necessary to give the court jurisdiction, it must follow that the court did not acquire jurisdiction in the premises, and it therefore committed no error in dismissing the protest. Therefore the petition herein is hereby denied, with costs. So ordered.

Araullo, C. J., Street, Malcolm, Avanceña, Villamor, Ostrand, and Romualdez, JJ., concur.

Johns, J., concurs in the result.

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