43 Phil. 715

[G. R. No. L-19427. September 02, 1922]

MARIANO TENGCO, PETITIONER, VS. VICENTE JOCSON, JUDGE OF FIRST INSTANCE OF BULACAN, ANASTACIO SANTOS, AND CIPRIANO LOMOTAN, RESPONDENTS.

D E C I S I O N

JOHNSON, J.:

This is an original petition in the Supreme Court for the writ of prohibition. Its purpose is to obtain that writ to restrain the respondent judge from taking jurisdiction and deciding a certain municipal election protest. Upon the presentation of the petition, an order was issued to the respondents to show cause why the prayer of the petition should not be granted. The respondents Anastacio Santos and the Honorable Vicente Jocson, judge, each filed a separate answer to the petition. The respondent Cipriano Lomotan neither demurred to nor answered the petition.

The facts out of which the present action arose may be stated as follows:

First. That on the 6th day of June, 1922, a general election was held in the municipality of Malolos for the election of municipal officers and for other purposes;

Second. That on the 8th day of June, 1922, the board of municipal inspectors declared that Mariano Tengco had been duly elected to the office of president of said municipality ;

Third. That on the 15th day of June, 1922, the respondent Anastacio Santos presented a motion of protest in the Court of First Instance of the Province of Bulacan, protesting said election; and

Fourth. That on the 23d day of June, 1922, the petitioner herein, Mariano Tengco, filed his answer to the motion of protest in which, among other things, he denied all and each of the facts alleged in the said motion of protest, and alleged that the facts stated therein were not sufficient to constitute an election protest nor to justify a judicial investigation of said

election, and prayed that the motion of protest be dismissed and that the protestant therein be adjudged to pay the costs.

The theory of the petitioner herein (the protestee in the court below) is, that inasmuch as the protestant did not allege in his motion of protest that he was a "registered candidate voted for at such election," he was without right to present the said motion of protest, and the court was without jurisdiction to hear and determine the question presented thereby. The petitioner herein contends that the only person who can present a motion of protest, in cases like the present, by virtue of section 44 of Act No. 3030, amending section 479 of Act No. 2711, is a *"registered candidate voted for,"* and that that allegation is necessary in the petition in order to give the court jurisdiction to hear and determine a motion of protest. After the answer of the protestee (the petitioner herein), to dismiss the motion of protest presented on the 15th day of June, 1922, the protestant (Anastacio Santos) on the 7th day of July, 1922, presented an amended motion of protest in which he changed the allegation that he was a "candidate voted for" to the allegation that he was a "registered candidate voted for." The lower court permitted said amendment and denied the motion of the protestee (the petitioner herein), and directed that the cause be set down for trial as soon as possible. Thereupon the present petition was presented.

The petition, the answer, and the arguments presented by the respective parties, present the following questions: First. By virtue of the provisions of section 44 of Act No. 3030, by whom must the motion of protest in a municipal election contest be presented?

Second. Does the Court of First Instance, which is given special jurisdiction in election protest cases, acquire jurisdiction to hear and determine such a protest when it is presented by any other person or persons than those designated by the law?

Third. May a "motion of election protest," when presented by any other person or persons than those designated by the law, be amended so as to indicate that the same had been presented by the person designated by the law, after the expiration of the time within which the original motion of protest must be presented?

With reference to the first question, we find that the first Election Law (Act No. 1582, section 27) provided that: "Contests in all elections for the determination of which provision has not been made otherwise shall be heard * * * upon motion by any candidate voted for * * *." Said Act (No. 1582, sec. 27) was amended by Act No. 2170. The Legislature, however, did not change that part of Act No. 1582 with reference to the person who might present

the motion of protest. Said Act No. 2170, section 2, provided that: "Contests in all elections for the determination of which provision has not been made otherwise shall be heard * * * upon motion by any candidate voted for * * *." Section 2 of Act No. 2170 was amended by section 576 of Act No. 2657, and again the Legislature retained the same provision with reference to the person who might present a motion of protest contained in section 27 of Act No. 1582. Said section 576 provided that: "Contests in all elections for the determination of which provision has not been made otherwise shall be heard * * * upon motion by any candidate voted for * * *." Section 576 of Act No. 2657 was again brought forward, with slight amendment, into Act No. 2711, as section 479. Said section 479 (Act No. 2711) provided that: "Contests in all elections for the determination of which provision has not been made otherwise shall be heard * * * upon motion by any candidate voted for * * *.". Said section 479 (Act No. 2711) was amended by section 44 of Act No. 3030. The amendment made a marked change in the four laws preceding, with reference to the person who might present the motion of protest. It (section 44 of Act No. 3030) provides that: "Contests in all elections for the determination of which provision has not been made otherwise *shall* be heard * * * upon motion by any *registered candidate voted for*."

From the examination of the foregoing quotations of the various preceding laws, it will be found that the Legislature in its first election law of January 9, 1907, provided that elections might be contested "upon motion by any candidate voted for" and that that provision continued and was carried forward through various amendments of the Election Law (Acts Nos. 2170, 2657, and 2711). That provision of the various laws continued in force from January, 1907 to March 9, 1922. It was enforced for a period sufficiently long to give the legislative department of the Government an opportunity to determine whether it was a wise or unwise provision. Considering that in Act No. 3030 the Legislature provided that election contest "shall be heard * * * upon motion by any registered candidate voted for," we must conclude that the Legislature considered the amendment important, and that it was wise and advisable. We cannot escape the conclusion, when the Legislature provided that the motion of protest shall be made upon motion by any "registered candidate voted for," that, that it is what the Legislature intended. The law is perfectly plain; there is no ambiguity and it needs no interpretation. It seems to be clear and free from doubt that the Legislature intended that no election contest, for which provision is not otherwise made, shall be instituted except by a "registered candidate voted for," and by no other person.

With reference to the second question above presented, it may be said that the Election Law makes the Court of First Instance a court of special jurisdiction, and provides a special procedure for hearing and determining a motion of protest in election cases. The Court of

First Instance, being a court of special jurisdiction, has no jurisdiction over an election protest until the special facts upon which it may take jurisdiction are expressly shown in the "motion of protest." There is no presumption in favor of the jurisdiction of a court of limited or special jurisdiction. It is a well-established rule that the record of a court of special jurisdiction must affirmatively show that the court has jurisdiction. When a court is given special statutory jurisdiction, under proceedings different from the ordinary proceedings, the special jurisdictional facts must appear. The special jurisdictional facts must be shown by the record, both with respect to the jurisdiction of the subject- matter, as well as with respect to the jurisdiction of the parties. (Kemp's Lessee vs. Kennedy, 5 Cranch [U. S.], 173; Mayhew vs. Davis, 16 Fed. Cases No. 9347; Furgeson vs. Jones, 17 Ore., 204; Grignon vs. Astor, 2 Howard, 319; Walker vs. Turner, 9 Wheaton, 541; Glos vs. Woodard, 202 111., 480; King vs. Bates, 80 Mich., 367; Clark vs. Norton, 6 Minn., 277; Matter of Baker, 173 N. Y., 249; Martin vs. Martin, 173 Ala., 106.)

Where the jurisdiction which a court exercises is special, created by an act of the legislature, its modes of proceedings and powers are regulated and defined by the law and it cannot, under any supposed analogy to ordinary proceedings, exercise any power beyond that which the act of the legislature has given. (U. S. vs. Moorehead, 1 Black, 488; East Tennessee, etc., Railroad Co. vs. Southern Telegraph Co., 112 U. S., 306.)

The Election Law in the Philippine Islands has made election contest a special proceeding, distinct in form and substantially different from the ordinary proceedings. The proceedings upon an election contest in the Court of First Instance, under the statute, are special and summary in their nature; and it is a general rule that strict observance of the statute, so far as regards the steps necessary to give jurisdiction, must be required in such cases. The proceedings, therefore, being special, the rule is that the jurisdictional facts must appear on the face of the proceedings. (Sutherland, Statutory Construction, section 391, and many cases cited; Schwarz vs. Garfield County Court, 14 Colo., 44.)

It was said, in the case of Gillespie vs. Dion, 33 L. R. A., 703, that: " 'Where the statute provides that the election of a public officer may be contested by *"any candidate orelector*," the person instituting said contest must aver that he is an elector, or that he was a candidate for the office in question. This must appear on the face of the record, and it is not enough that the contestant offers proof that he is an elector. The incumbent is not bound to answer or take notice of a complaint which does not contain this averment.' " Under the present Election Law, the jurisdiction of the court depends entirely upon the terms of the Act and, consequently, before contestors can invoke the jurisdiction of the court, facts must

be stated by them which bring the case within the purview of the Act. (Paine on Elections, section 809; Rutledge vs. Crawford, 91 Cal., 526; Vailes vs. Brown, 16 Colo., 462.)

From all of the foregoing decisions, we must conclude that if the "motion of protest" does not show upon its face that it was presented by a "registered candidate voted for," the Court of First Instance acquires no jurisdiction to hear and determine the petition or motion.

With reference to the third question, to wit: Can a motion of protest which fails to show that the court has jurisdiction to hear and determine the questions presented be amended after the lapse of the time within which the original motion of protest must be presented? It may be said that section 44 of Act No. 3030 provides that the motion of protest *shall* be led with the court within two weeks after the promulgation of the election. In the present case the promulgation of the election was made on the 8th day of June, 1922. The first motion of protest was presented on the 15th day of June, 1922, clearly within the two-week period marked by the law. The amended motion of protest was presented on the 7th day of July, 1922. Counting from the 8th day of June, the two weeks would expire on the 22d day of June, 1922. It is clear therefore that the amended motion of protest was not presented until after the expiration of the two weeks.

Upon the question presented we find numerous decisions in various States of the Union. In the State of Montana the Election Law provides that "an elector" may protest an election and that he must file, with the clerk of the board of county commissioners, "within ten days" after some person has been declared elected, a statement in writing, specifying the grounds of contest, verified by affidavit, and such clerk shall issue to the contestee a notice to appear, at a time and place specified in the notice, before the district court, which notice, with a copy of such statement, shall be delivered to the sheriff, who shall, within *five* days, serve same on the contestee by delivering to him a copy of such notice.

In the case of Gillespie vs. Dion (18 Mont., 183; 33 L. R. A., 703), Gillespie filed his "statement" of protest in which he said "that will contest said election," etc., etc., without alleging that he was an *elector* of the precinct in which the election was held. Notice in accordance with the law was given to Dion. Later, Dion presented a motion to quash the "statement" (protest). The motion to quash alleged that the statement was insufficient to give the court jurisdiction to hear and determine any contest whatever, or at all, and did not state facts sufficient to warrant the relief prayed for, or any relief and that it did not show that the said Gillespie was an "elector." The motion to quash was denied by the lower court and Dion excepted. Later, Gillespie filed an amended statement of protest, which was

presented, however, after the expiration of the time within which his original "statement" should have been presented. In his amended statement Gillespie alleged that he was an "elector." The court admitted the amendment. Later, Dion moved to strike out the amendment, which motion was denied by the court, and the cause finally reached the Supreme Court on appeal. After a consideration of the appeal, the Supreme Court revoked the order of the lower court on the ground that it had no jurisdiction of the protest. In the course of the opinion the court said: "Doubtless, amendments may be made to a statement (protest) sufficiently good to enable the proceeding to be considered, provided such amendments do not essentially change the grounds of the contest, or set forth grounds where none were originally stated; but, where the amendments are so radical as to virtually initiate a contest where really no grounds at all had been specified in the original statement, we are inclined to hold they ought not to be permitted after the ten days allowed by law for commencing proceedings (the protest) have expired. A dissatisfied elector should be vigilant."

A motion of protest in election contest, which fails to aver protestant's qualifications to maintain the proceedings, cannot be amended to supply the omission after the lapse of the time which the statute allows for the commencement of the proceeding. The requirements of section 44 of Act No. 3030 are jurisdictional. (Edwards vs. Knight, 8 Ohio Rep., 375; McCrary on Elections [4th ed.], sec, 442; Blanck vs. Pausch, 113 111., 60; Patterton vs. Fuller, 60 Northwestern Rep., 1071; 15 Corpus Juris, 842; 9 Ruling Case Law, sec. 157; Adams vs. McCormick, 216 111., 76; Pearson vs. Alverson, 160 Ala., 265.)

From all of the foregoing, we are of the opinion, and so decide, that the remedy prayed for should be granted, and it is so ordered and decreed. And without any finding as to costs, it is so ordered.

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

Date created: April 22, 2022