

**FLORENCIO BERNABE, PETITIONER, VS. HON. BENJAMIN H. AQUINO,
IN HIS CAPACITY AS JUDGE, COURT OF FIRST INSTANCE OF RIZAL
(BR. VIII) AND ROMEO A. R. AMBROCIO, RESPONDENTS.**

G.R. Nos. L-34164-79. October 25, 1971

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Original action for certiorari. In this first case involving the Election Code of 1971, Republic Act No. 6388, which took effect on September 2, 1971, petitioner questions the authority thereunder of the Commission on Elections to extend to October 14, 1971 the period for the filing of exclusion cases against disqualified or illegally registered voters.

Respondent Romeo A. R. Ambrocio, as election registrar of Paranaque, Rizal, filed on September 24, 1971 the petitions for exclusion from the permanent list of voters of Paranaque, Rizal, of the registered voters impleaded as respondents in said petitions docketed as Election Cases Nos. 63 to 78 of respondent court.

Petitioner, having been allowed to intervene as a mayoralty candidate who may be affected by the proceedings[1] filed motions to dismiss the cases on the ground that they were filed beyond the deadline of September 9, 1971 fixed under section 137 of the Election Code of 1971, which provides that such exclusion cases may not be filed within the period of sixty days before a regular election.[2]

Respondent court denied petitioner's dismissal motions for lack of merit in its order of October 5, 1971, and likewise denied in open court on the same day petitioner's motion for reconsideration.

Hence, the present petition challenging respondent court's jurisdiction to hear and resolve the exclusion cases. At petitioner's instance, the Court issued on October 7, 1971 a temporary restraining order enjoining respondent court from further proceedings in the pre-mises pending the Court's resolution of the issue.

Respondent election registrar maintains in his answer that the exclusion cases were timely filed with respondent court by virtue of Comelec Resolution No. RR-938 duly promulgated on September 3, 1971, extending, inter alia, the period for the filing of such exclusion cases up to October 14, 1971, inclusive, under the authority of the transitory provisions of section 240 of the new Code, as follows:

"WHEREAS, the Election Code of 1971 fixes definite periods and dates for certain pre-election acts;

"WHEREAS, it would no longer reasonably be possible to observe some of the periods and dates prescribed in said Code and as a matter of fact some of these periods and dates have already elapsed, while other periods and dates cannot be observed without impairing the rights and causes of action of those who may desire to avail themselves thereof or without depriving voters of their right of suffrage;

x x x

WHEREFORE, the Commission on Elections, pursuant to Sec. 240 of said Code, RESOLVED, as it hereby

RESOLVES, to fix and declare the following dates and periods in force for certain pre-election acts in connection with the November 8, 1971 elections:

x x x

"VIII. Inclusion and exclusion

of voters before precinct

books of voters are closed and sealed. (Secs. 136 and

137, Election Code of 1971)

A. Filing of petition in - Not later than Municipal Court or October 14, 1971 Court of First Instance

x x x"

1. The Court holds that the Comelec validly extended the dead-line for the filing of exclusion cases under the express authority thus granted it in section 240 of the new Code:

"SEC. 240. Designation of certain pre-election acts immediately after the approval of this Act. - If upon the approval of this Act, it should no longer reasonably be possible to observe the periods and dates herein prescribed for certain pre-election acts in the 1971 elections, the Commission shall fix other periods or order that voters shall not be deprived of their right of suffrage."[3]

The legislative injunction in section 247 of the new Code that the Comelec "shall have such powers pertaining to election matters, only as are expressly granted in this Code, existing laws or jurisprudence to the contrary notwithstanding. Nothing herein contained shall be construed as a grant of implied powers," as invoked by petitioner, is not herein applicable.

2. It should be recalled that under the previous law, the dead-line for the filing of such exclusion cases would have been later by fifteen days and would have expired only on September 24, 1971, since it provided for a longer period for the filing of such cases excepting only forty-five days before a regular election,[4] as against the earlier deadline of September 9, 1971 under the new Code proscribing the filing of exclusion cases within the period of sixty days before a regular election.[5] Since the previous law provided for the registration of qualified voters on any date but not later than sixty days before a regular election[6] it could readily be seen that the application of the new Election Code, as sought by petitioner, would in effect practically foreclose the right to file exclusion cases: - voters under the previous law had up to September 9, 1971 to register (60 days before the election) yet no exclusion case could be filed against them, since under the new Code, no such case may be filed after September 9, 1971 (no exclusion case may be filed within 60 days before the election).

Such extension to October 14, 1971 of the deadline for filing of exclusion cases was made doubly necessary since the Comelec in Article I of its cited resolution of September 3, 1971 extended the period for registration of voters "before election registrars - (to) every working day up to September 10, 1971," with a view of giving the voters every opportunity to register and not be deprived of their right of suffrage. Without such extension, the period to file exclusion proceedings would have expired on September 9, 1971, even before the expiration on September 10, 1971 of the extended period for registration.

Hence, to avoid giving such unintended sanctuary to disqualified and illegally registered voters, the Comelec properly exercised the authority granted under the transitory provision of section 240 of the new Code to extend the period for the filing of exclusion cases up to October 14, 1971, only for the 1971 elections.

3. The text and substance of the transitory authority granted to the Comelec in the cited section of the new Code

do not warrant petitioner's restrictive view that the purpose of the extension should be that "voters shall not be deprived of their right of suffrage," whereas exclusion proceedings precisely seek to deprive certain registered voters of their right to vote.

To begin with, voters who have been registered in the permanent list notwithstanding their being disqualified, or illegally registered, or fictitious, - which is the burden of the petitions below - may not validly claim to be deprived of their right of suffrage, if they are ordered excluded as the Election Code ordains. Then again, as it was no longer reasonably possible to observe the deadline for exclusion cases as prescribed in section 137 of the new Code since the deadline, September 9, 1971, was close at hand when the new Code was approved, the very condition therein laid down for the Comelec's exercise of the transitory authority to extend the deadline for the filing of such exclusion cases was clearly satisfied. As already stated above, since the Comelec extended to September 10, 1971 the period for registration of new voters, it necessarily had to extend to a reasonable period to October 14, 1971 the period for filing petitions for the exclusion of disqualified or fictitious voters who may have succeeded in being illegally registered. Furthermore, it should not escape attention that the questioned resolution likewise extends the same deadline for inclusion proceedings which otherwise it would not have been reasonably possible to observe, because of the belated enactment and approval of the new Code.

ACCORDINGLY, the petition is hereby dismissed and the temporary restraining order of October 7, 1971 is recalled and set aside. In view of the shortness of the time left before the November 8, 1971 elections, this decision is declared immediately executory and respondent court is directed to forthwith hear and re-solve the pending exclusion cases before it. SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Castro, Fernando, Barredo, Villamor, and Makasiar, JJ., concur.

[1] Pursuant to Sec. 139(e), R.A. 6388.

[2] The pertinent provision of sec. 137, R.A. 6388 reads:

"SEC. 137. Application for exclusion of voters from the permanent list. -- Any registered voter, representative of a political party or election registrar of the city, municipality or municipal district, may at any time except sixty days before a regular election and twenty-five days before a special election apply with the proper court for the exclusion of a voter from the permanent list on the ground that he is disqualified, or illegally registered, giving the name and residence of the latter, and the election precinct in which he is registered. ** ** *." (Underscoring supplied)

[3] Emphasis furnished. This is the official text as printed by the Bureau of Printing and per certification dated October 25, 1971 issued by Secretary I. B. Pareja of the House of Representatives and attached by the Clerk to the Rollo.

[4] Sec. 15, R.A. No. 3588, which was renumbered as Sec. 18, R.A. No. 4730.

[5] Sec. 137, R.A. No. 6388, *supra*, fn. 2.

[6] Sec. 5, R.A. No. 3588, renumbered as Sec. 8, R.A. No. 4730. The new Election Code of 1971 now provides in Section 109 for an earlier deadline for registration of qualified voters, i.e. "not later than the first Saturday of August of an election year."

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