

MARIANO M. CASTAÑEDA, PETITIONER AND APPELLEE, VS. JOSE V. YAP, RESPONDENT AND APPELLANT.

G.R. No. L-5379. August 22, 1952

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal from the decision of the Court of First Instance of Tarlac in the above-entitled case, "declaring that the respondent Jose V. Yap was ineligible to be voted as municipal mayor for the municipality of Victoria, Tarlac, on November 13, 1951," and enjoining him from assuming office. The court found that Yap was born on January 16, 1929, hence was less than 23 years of age when proclaimed elected. (Art. 2174, Revised Administrative Code.)

The appellant in his brief has made five assignments of error, to wit:

"The trial court erred in holding that the petitioner-appellee is not estopped from questioning the eligibility of the respondent-appellant. Notwithstanding petitioner's knowledge of such alleged ineligibility and failure to question the eligibility of the petitioner before or during the election.

"Assuming that the evidence on record is not sufficient to stop the petitioner-appellee from questioning the eligibility of the respondent-appellant, then the trial court erred in refusing the presentation of further evidence to establish the defense of estoppel.

"The lower court erred in declaring the respondent-appellant ineligible for the office of municipal mayor notwithstanding the fact that neither public nor private interest will be served thereby.

"The lower court erred in admitting Exhibit 'E', a private document, notwithstanding the fact that it was not properly identified.

"The lower court erred in denying the right of the respondent appellant to present evidence in support of the counterclaim."

First assignment of error. "Where it is necessary specially to plead estoppel, if facts constituting an estoppel are not pleaded, a finding that an estoppel exists is unauthorized." (31 C. J. S. 466.) Estoppel was not set up as a defense in the answer to the complaint in this case.

Even if appellant had pleaded estoppel, the plea would not hold; for the right to an elective provincial or municipal office can be contested, under existing legislation, only after proclamation. There is no authorized proceeding by which an ineligible candidate could be stopped from running for office. (Sec. 173 of the Revised Election Code; *Caesar vs. Garrido*, 53 Phil. 97.)

Good faith on the part of the respondent is alleged. Good faith, however, does not cure a candidate's ineligibility although it might be a good defense in a criminal prosecution. As a matter of fact defendant did know his age, for in his application for admission to the Far Eastern University (Exhibit E) he gave January 16, 1929, as the date of his birth.

The second assignment of error also has to do with estoppel. The trial court, for the reasons above stated, ruled, correctly, as irrelevant evidence designed to show that plaintiff was aware of defendant's ineligibility.

Third assignment of error. The requirement that a candidate for public office possess certain age is based on public policy. No specific damage or harm need be shown. And as to plaintiff's right to question defendant's qualification to be voted, it suffices to point to Section 173 of the Revised Election Code (Republic Act No. 180), which provides that, "When a person who is not eligible is elected to a provincial or municipal office, his right to the office may be contested by any registered candidate for the same office before the Court of First Instance of the province, within one week after the proclamation of his election, by filing a petition for quo warranto."

Fourth assignment of error. Proofs of defendant's age were, among others, these documents: Exhibits A and B, a certificate by the Chief of the Division of Archives, stating that Register No. 68 referring to entries of birth in the Civil Register of the Municipality of Victoria, Province of Tarlac, for the quarter ending March, 1929, shows that Jose V. A. Yap was born on January 16, 1929; Exhibit C, a certificate of baptism by the parish priest of the Independent Church of Victoria, Tarlac, testifying that the date of Jose V. A. Yap's baptism was August 9, 1931, and the date of his birth January 16, 1929; Exhibit D, a certificate by the municipal treasurer and local civil registrar stating that according to our records filed in this office one named Jose V. A. Yap was born in the year 1929; * * * that (although) in the registrar of births Yap's name does not appear * * * (yet) according to the list submitted to the Municipal Secretary for Military Training, Yap appears therein as having been born January 16, 1929;" Exhibit E, a certificate by the Registrar of the Far Eastern University, stating that on the certificate of matriculation filed on October 7, 1947, when Jose V. Yap enrolled in the Institute of Arts and Sciences, the applicant's date of birth was stated as January 16, 1929.

Granting that Exhibit E should not have been admitted, the error could not change the result, with Exhibits A to D attesting to the same fact sought to be proved by Exhibit E. However the latter certificate was properly allowed if only as part of defendant's testimony; for the defendant, on the witness stand, admitted that he had furnished the information set forth in that paper. Specifically he admitted that he was born on January 16, 1929.

The question whether damages are proper subject of counterclaim in a quo warranto proceeding of this nature is immaterial in view of the result of the case which fully justified plaintiff's action.

Judgment of the trial court is affirmed with costs.

Paras, C. J., Pablo, Padilla, Montemayor, Bautista Angelo, and Labrador, JJ., concur.

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