

GREGORIO B. MORALEJA, PETITIONER, VS. HON. LORENZO RELOVA, JUDGE OF THE COURT OF FIRST INSTANCE OF BATANGAS, BRANCH I, AND CESAR A. MENDOZA, RESPONDENTS.*G.R. No. L-30828. October 22, 1971*

Ponente: BARREDO, J.

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Petition for review of the decision of the Court of First Instance of Batangas in Civil Case No. 1201, an electoral protest filed by Cesar Mendoza, a candidate for councilor of the Municipality of Batangas, Batangas, in the elections held on November 14, 1967, against Gregorio Moraleja, the candidate for the same position who was proclaimed by the Municipal Board of Canvassers as winner over the former by a plurality of 27 votes declaring respondent Mendoza as the duly elected eighth councilor of said municipality with a plurality of one (1) vote over petitioner Moraleja. Grounds alleged in the petition filed with this Court on September 3, 1969 are: (1) the trial court erred in not dismissing the protest notwithstanding that respondent Mendoza, after the election and during the pendency of the electoral contest, had accepted the position of Technical Assistant to the Vice-Governor of Batangas Province and was already discharging the functions of said position, thereby either disqualifying himself or abandoning said protest; (2) the trial court erred in rejecting twenty-one (21) ballots wherein petitioner appears voted for, allegedly because said ballots bear the signatures of the respective voters; (3) the trial court erroneously ruled as valid a ballot wherein respondent Mendoza appears voted for notwithstanding it was found in the red box for "spoiled ballots"; (4) the trial court erroneously counted as valid three (3) ballots wherein respondent Mendoza appears voted for notwithstanding they are marked ballots; (5) the lower court erred in not counting in favor of petitioner six (6) ballots wherein his name appears voted for; and (6) the lower court erred in not rejecting eight (8) ballots wherein the surname Mendoza only is written in two spaces for councilor, notwithstanding there are two candidates with the same surname Mendoza for the same position of councilor.

On September 5, 1969, this Court resolved to deny the petition, "the issues (t)herein not being purely questions of law," hence not within the appellate jurisdiction of the Court. The position in controversy being that of municipal councilor, under the law, the Revised Election Code, Republic Act No. 180, as amended, the decision of the Court of First Instance is final and unappealable except on questions of law. (*Calano v. Cruz*, 94 Phil. 230)

In due time, petitioner filed a motion for reconsideration alleging that by virtue of Republic Act 5495, the Municipality of Batangas became a city on June 21, 1969 and, consequently, the position involved herein is no longer that of a municipal councilor but is instead that of a city councilor, hence under Section 178 of the Revised Election Code, then in force, the decision of the court a quo is already appealable even on questions of fact, for which reason, this appeal should be certified to the Court of Appeals. A written opposition to this motion was filed by respondent Mendoza, and after due hearing, the Court resolved to give due course to the petition, not because of the point raised by petitioner regarding the conversion of Batangas into a city, but because, upon further consideration of the grounds of the petition, the consensus in the Court is that some of said grounds might indeed be considered as pure issues of law. As to the matter of the conversion of Batangas into a city, We have

already ruled in a similar case that such conversion, having taken place after the election in dispute, cannot alter the nature of the office or position involved in the protest. (Jose Sol Baloria v. Hon-orable Doroteo de Guzman, G. R. No. L-33097, promulgated September 30, 1971.)

The first question of law raised in the petition is whether or not the acceptance by respondent Mendoza of an appointment to the position of Technical Assistant to the Vice-Governor of Batangas Province constitutes either a disqualification from the office in dispute or an abandonment of his protest against the election of petitioner. Petitioner cites in support of the alleged ineligibility of respondent Section 2175 of the Revised Administrative Code providing as follows:

"SECTION 2175. Persons ineligible to municipal office.- In no case shall there be elected or appointed to a municipal office ecclesiastics, soldiers in active service, persons receiving salaries or compensation from provincial or National funds, or contractors for public works of the municipality."

Such reliance is unavailing. To begin with, the alleged ineligibility arose after the elections had already been held, and it is quite clear that a candidate's eligibility must be judged as of the date of the election. In any event, this Court held more than a decade ago that ineligibility of the protestant is not a defense in an election contest not only because it is incongruous with the only issue therein, which is who obtained the higher number of votes, but is also pre-mature, inasmuch as such issue may be raised only after the candidate has been proclaimed and the protestant is not proclaimed until after he has been declared winner by the court, apart from the fact that if a protest is dismissed only because the protestant is ineligible, the result would be that protestee would be in office though in fact he received fewer votes than the former. (Caesar v. Garrido, 53 Phil. 97, 102-103.)

As to the contention that by accepting such appointment as Technical Assistant, protestant has abandoned his protest, all that need be said is that once the court has acquired jurisdiction over an election contest, the public interest involved demands that the true winner be known without regard to the wishes or acts of the parties, so much so that there can be no default, compromise nor stipulation of facts in this kind of cases. (Francisco, How to Try Election Cases, p. 163, citing *Civilio v. Tomacruz*, 62 Phil. 689) In the same manner that the acceptance by the protestee of an appointment to another position is not a ground for dismissal of the protest (Philippine Law on Elections by Martin, 1970 ed., pp. 258-259, citing *Castro v. Maramba*, G. R. No. 13206, January 7, 1918) like the resignation of the protestee from the contested office (*Angeles v. Rodriguez*, 46 Phil. 595), simply because it is of public interest that the real winner be known, neither can the acceptance of a more or less temporary employment, such as that of a technical assistant of the Vice-Governor, which is a primarily confidential position, be considered as inconsistent with protestant's determination to protect and pursue the public interest involved in the matter of who is the real choice of the electorate. In such instances, the plight of protestant may be viewed in the same light as that of an employee who has been illegally dismissed and who, to find means to support himself and family while he prosecutes his case for reinstatement, accepts a temporary employment elsewhere. Such employee is not deemed to have abandoned the position he seeks to recover. (*Tan v. Gimenez, et al.*, G. R. No. L-12525, February 19, 1960, 107 Phil. 17; *Potot v. Bagano*, G. R. No. L-2456, January 25, 1949, 82 Phil. 679) Of course, the case of a protestant who accepts a permanent appointment to a regular office could be different, but We are not ruling on it here.

The other ground of the petition which raises a legal question is that referring to the ruling of the trial judge in favor of the validity of the ballot, Exhibit CP-18 "A", wherein respondent appears voted for which was found during the revision in the red box for spoiled ballots. In this connection, We hold as a matter of law that the mere fact that a ballot otherwise bearing no sign or indication of being legally a spoiled one is found in the course of the trial of an election contest, which includes, of course, the revision of the ballots by the court revisors, inside the red box for spoiled ballots does not preclude the court from determining whether or not it is a valid ballot

mistakenly or inadvertently placed in said red box, (Ignacio v. Navarro, 57 Phil. 1000) and since the court a quo has found as a fact that the ballot in question is a valid one, it is beyond our faculty to set aside His Honor's questioned ruling, the same being a finding of fact.

Anent the allegation of petitioner that three ballots, namely, Exhibit CP-93 "A-25", wherein respondent Mendoza appears voted for, but below the eighth or last name voted for councilor,[1] the voter wrote as follows: "Pasensya na ang hindi kasama", Exhibit CP-59 "A-3", containing also a vote for respondent Mendoza and wherein there is also a vote for Casas-Garapon as councilor, the registered surname of one candidate for councilor being Casas, and Exhibit CP-98 "A-14", likewise containing a vote for said respondent, but wherein in the line for Vice-Governor appear the words " 'Bomba' Arienda", which is not exactly the name of any of the candidates for said position, it is the unanimous opinion of the members of the Court that the trial judge committed no error in counting as valid ballots Exhibits CP-59 "A-3" and CP-98 "A-14", since the word "Garapon" in the former appears no more than a *descriptio personae*, (Pangontao v. Alunan, G. R. No. L-18926, November 20, 1962, 6 SCRA 853) and the word "Bomba" in the latter evidently refers to the name by which the candidate Roger Arienda is popularly known as a radio-commentator. There is also unanimity in the Court in holding, on the other hand, that His Honor erred in not considering the sentence "Pasensya na and hindi kasama" in Exhibit CP-93 "A-25", as an identifying mark which invalidates the ballot. We find no relevance in said statement to the votes cast. Indeed, it is high time voters learned that any irrelevant remark placed on the ballot which can readily be used as a means of identification directly violates Section 135 of the Revised Election Code, as amended by Republic Act 599, which makes it "unlawful to use . . . any . . . means to identify the vote of the voter."

As to the rest of the grounds of the petition, it is Our considered view that they involve questions of fact which are not within the legitimate scope of this appeal. Of like nature are the issues raised in respondent Mendoza's counter-assignments of error. Unlike in the case of the three ballots just discussed, the proper appreciation of the other ballots claimed by petitioner and respondent requires the presentation of evidence aliunde and the evaluation thereof by the Court, since the specific objections thereto are factual in nature. The writing of the name of a non-candidate on any space intended for an office in a ballot may be considered as an identifying mark only when there is proof that such was the intent of the voter because an identification mark cannot be presumed. (Jaucian v. Carlos, 104 Phil. 603)

It results, therefore, that with the nullification of Exhibit CP-93 "A-25", a vote for respondent Mendoza, the majority of one vote found in his favor by the trial court is offset, and the election herein in question has to be declared as having ended in a tie which pursuant to Section 170 of the Revised Election Code calls for the drawing of lots between the tied candidates.

ACCORDINGLY, judgment is hereby rendered reversing the decision of the court a quo. The records of this case shall immediately be remanded to the lower court and the said court is ordered to call the parties on any convenient date not later than five days after receipt of the said records and to then and there make them draw lots under its supervision, and the winner shall be proclaimed by the trial judge as the duly elected eighth councilor of Batangas City in the elections of November 14, 1967. In the public interest, the circumstance of time so demanding, this decision is hereby declared to be immediately executory. No costs.

Concepcion, C.J., Reyes, Makalintal, Zaldivar, Fernando, Villamor, and Makasiar, JJ., concur.
Castro, J., did not take part.
Teehankee, J., concurs and dissents in a brief opinion.

[1] Election was only for eight councilors.

150 Clean Clean MicrosoftInternetExplorer4 /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

CONCURRING AND DISSENTING OPINION

TEEHANKEE, J.:

I reiterate my opinion in *Baloria vs. de Guzman*, G.R. No. L-33097, decided last September 30, 1971, that where the incumbent officials of a defunct municipality automatically become officials in the same capacity of the city to which it is converted under the express terms of its charter, as in the present case of Batangas City, (Republic Act 5495), "the pertinent provision of section 178 of the Revised Election Code (now section 227, Election Code of 1971, R. A. 6388) expressly permitting appeals from the court of first instance decision in an election contest involving the position of city councilor, 'to the Court of Appeals (on questions of fact) or to the Supreme Court (on questions of law), as the case may be', (becomes) the properly applicable provision."

Since the Court, however, has ruled to the contrary in *Baloria* and in the present case, and has considered and resolved only the pure issues of law raised in the petition, I express my concurrence in the result thus reached in the main opinion.

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