

JOSE P. MONSALE, PROTESTANT AND APPELLEE, VS. PAULINO M. NICO, PROTESTEE AND APPELLANT.

G.R. No. L-2539. May 28, 1949

Ponente: OZAETA, J.

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OZAETA, J.:

This is an appeal by the protestee from a decision of the Court of First Instance of Iloilo declaring the protestant elected municipal mayor of Miagao as a result of the general elections held on November 11, 1947.

It appears that the protestant withdrew his certificate of candidacy on October 10, 1947, but, on November 1, attempted to revive it by withdrawing his withdrawal. The Commission on Elections, however, ruled on November 8 that the protestant could no longer be a candidate in spite of his desire to withdraw his withdrawal. A canvass of the election returns showed that the protestee Paulino M. Nico received 2,291 votes; another candidate, Gregorio Fagutao, 126, votes; and the protestant Jose F. Monsale, none, evidently because the votes cast in his favor had not been counted for the reason that he was not a registered candidate. Consequently, Nico was proclaimed elected.

The pivotal question presented in this appeal is whether a candidate who has withdrawn his certificate of candidacy may revive it, either by withdrawing his letter of withdrawal or by filing a new certificate of candidacy, after the deadline provided by law for the filing of such certificate.

Section 31 of the Revised Election Code (Republic Act No. 180) provides that "no person shall be eligible unless, within the time fixed by law, he files a duly signed and sworn certificate of candidacy." Section 36 provides that "at least sixty days before a regular election, and thirty days at least before a special election, the * * * certificates of candidacy for municipal offices shall be filed with the municipal secretary, who shall immediately send copies thereof to the polling places concerned, to the secretary of the provincial board, and to the Commission on Elections." Section 38 further provides that "if, after the expiration of the time limit for filing certificates of candidacy, a candidate with a certificate of candidacy duly filed should die or become disqualified, any legally qualified citizen may file a certificate of candidacy for the office for which the deceased or disqualified person was a candidate in accordance with the preceding sections on or before midday of the day of the election, and, if the death or disqualification should occur between the day before the election and the midday of election day, said certificate may be filed with any board of inspectors of the political division where he is a candidate or, in the case of candidates to be voted for by the entire electorate, with the Commission on Elections."

In the present case the protestant withdrew his certificate of candidacy on October 10, 1947, and requested the Commission on Elections that it "be considered as though it has never been filed at all." There is no question as to the right of a candidate to withdraw or annul his own certificate of candidacy, there being no legal prohibition against such withdrawal. Therefore, on October 10, or thirty-one days before the election, the protestant ceased to be a candidate by his own voluntary act, and as a matter of fact the boards of election inspectors of the municipality of Miagao were duly notified of his withdrawal. His letter to the Commission on Elections dated

November 6, 1947, which he subscribed and swore to before a notary public on November 1, whereby he withdrew his withdrawal of his certificate of candidacy, can only be considered as a new certificate of candidacy which, having been filed only four days before the election, could not legally be accepted under the law, which expressly provides that such certificate should be filed at least sixty days before the election.

The evident purposes of the law in requiring the filing of certificates of candidacy and in fixing a time limit therefore are (a) to enable the voters to know, at least sixty days before a regular election, the candidates among whom they are to make the choice, and (b) to avoid confusion and inconvenience in the tabulation of the votes cast; for if the law did not confine the choice or election by the voters to the duly registered candidates, there might be as many persons voted for as there were voters, and votes might be cast even for unknown or fictitious persons as a mark to identify the votes in favor of a candidate for another office in the same election.

The only instance wherein the law permits the filing of a certificate of candidacy after the expiration of the time limit for filing it is when a candidate with a certificate of candidacy duly filed dies or becomes disqualified.

The Commission on Elections was, therefore, right in holding as it did that the protestant "can no longer be a candidate in spite of his desire to withdraw his withdrawal," In the case of *Clutario vs. Commission on Elections*, G. R. No. L-1704, this court sustained the ruling of said commission upon similar facts that "by his own voluntary act and deed petitioner has nullified his certificate of candidacy and in the light of the election laws such certificate of candidacy has been definitely withdrawn, hence non existing."

Under section 174 of the Revised Election Code, "a petition contesting the election of a provincial or municipal officer-elect shall be filed with the Court of First Instance of the province by any candidate voted for in said election and who has presented a certificate of candidacy." This clearly implies that a candidate voted for who has not presented a certificate of candidacy has no right to contest the election. In other words, the herein protestant not being a registered candidate, has no standing before the court.

The judgment appealed from is reversed and the protest is ordered dismissed, with costs against the appellee. So ordered.

Moran, C. J., Paras, Feria, Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

DISSENTING

PERFECTO, J.:

There is no question that in the election held on November 11, 1947, protestant-appellee Dr. Jose F. Monsale received 2,877 votes for the position of Mayor of Miagao, Iloilo, against 2,276 votes received by protestee-appellant Paulino M. Nico, the candidate who received the second largest number of votes and, therefore, Monsale was elected Mayor of Miagao with a majority of 601 votes against the one who occupied the second place.

There is no more basic principle in our government than the one enunciated in the fundamental law to the effect that sovereignty resides in the people. That is the cornerstone of the system of democracy established in this country by the people solemnly expressed in the Constitution. The means through which the people exercise that sovereignty is popular suffrage. No reason or pretext should be availed of to defeat or to cause the failure of the popular will as expressed in an election.

In the present case, there is absolutely no question that the people decided to elect Dr. Jose F. Monsale as Mayor

of Miagao. That popular decision should not and could not be reversed without violating the most fundamental principle of our democracy and jeopardizing popular sovereignty.

The question as to the legal effects of Dr. Monsale's withdrawal of his certificate of candidacy has been squarely raised in the petition filed with this Supreme Court in *Nico vs. Blanco* (81 Phil., 213), and amply discussed by the parties, who are the same appearing now before us in the present case.

Upon the decision of said case on June 30, 1948, a year ago, we took occasion to express in unmistakable terms our position in the concurring opinion which is reproduced as follows:

"The procedural grounds stated in the decision penned by Mr. Justice Bengzon are not the only ones that induced us to vote for the denial of the petition. We are of opinion that there are substantive grounds upon which to base the denial, and the corresponding legal question should be faced and decided squarely, because it has been squarely raised in the pleadings, it was the subject of extensive arguments by counsel, and upon it the members of this Court have thoroughly deliberated.

"The filing of a certificate of candidacy is a technicality that should be enforced before the election, but can be disregarded after the electorate has made the choosing. This is only in accordance with the doctrine, laid down by the Supreme Court, to effect the provisions of the election laws, generally, are mandatory before the election and directory after. Here we are reiterating an opinion expressed in another case the decision of which is pending promulgation weeks ago. If respondent Monsale has garnered the majority of the votes cast for Mayor of Miagao, notwithstanding the fact that he has withdrawn his certificate of candidacy, a withdrawal that he withdrew two days before the election, the electors completely disregarding what has been done about said certificate of candidacy, it will necessitate much more than a whole system of political philosophy to convince us not "to give effect to the will of the people. The solemn declaration in the fundamental law that sovereignty resides in the people would, otherwise, be whimsical.

"No pretense is made that, besides the disputed effects of a withdrawn withdrawal of a certificate of candidacy, any evil has resulted by the shifting attitude of a candidate, in regard to the orderly holding of suffrage, on any sector of public interest. Without putting in issue the legislative wisdom regarding the filing of a certificate of candidacy, there is no way of brushing aside the universal conviction to the effect that election legal provisions are enacted, never to stifle or defeat the popular will, but give it the freest sway, as an indispensable factor in the existence, functioning and preservation of democracy.

"The petition should be dismissed."

Then we regretted that the majority of the Supreme Court abstained from deciding a question squarely presented before us. Our regret is amply justified by the fact that if, after all, the majority had to arrive at the result by which the present case is disposed of, there was absolutely no reason why that majority refused to say so since June, 1948, so as to avoid the waste of time, attention and energies entailed by allowing this case to drag on for a whole year for no useless purpose; thus, delaying the administration of justice in a case in which many thousands of inhabitants of Miagao, if not the hundreds of thousands of inhabitants of the whole Province of Iloilo, were and are interested.

Our position of one year ago has not changed. Our faith in popular rule as the only system of government compatible with human dignity remains unshakable, and we cannot betray that faith by depriving the people of Miagao of the services of the mayor they have freely chosen in an election regularly and legally conducted.

We cannot agree with the majority in their reversing the appealed judgment, as we feel that that reversal is one of the hardest blows ever received by a democracy tottering under the menaces of totalitarian forces that are trying to overwhelm the world under the rosy promises of a communistic ideology. In no other time have we felt it more imperative the need of the strictest adherence to the principles of democracy than nowadays when democracy

appears to be at a premium even in countries that have made avowed profession for democratic ideals by embodying them in their charters and fundamental laws.

We vote to affirm the appealed judgment.

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