

BENITO MONTINOLA, PETITIONERS, VS. THE HONORABLE COMMISSION ON ELECTIONS, RESPONDENT.*G.R. No. L-9860. January 21, 1956*

Ponente: PARAS, C.J.

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In connection with the elections held on November 8, 1955, the last day for filing certificates of candidacy was September 9. On September 8, the petitioner Benito Montinola filed his certificate of candidacy for mayor of Victorias, Negros Occidental, and on September 9, at 5:00 p.m., his certificate of candidacy for provincial board member of Negros Occidental. On September 10, at 9:40 a.m., he sent a telegram to the respondent Commission on Elections, withdrawing his certificate of candidacy for provincial board member, stating that said certificate was filed by mistake; whereupon the respondent Commission sent a telegram to the petitioner requiring the latter to file with the provincial secretary of Negros Occidental a sworn statement of withdrawal. Accordingly, on September 17, the petitioner filed with the provincial secretary the required affidavit. On October 18, the respondent Commission adopted a resolution declaring the petitioner ineligible for the office of mayor, on the ground that the withdrawal of his certificate of candidacy for provincial board member was not filed on or before September 9, with the result that the petitioner became ineligible not only for the office of provincial board member but also for the office of mayor, in accordance with section 31 of the Revised Election Code, which provides that "No person shall be eligible unless, within the time fixed by law, he filed a duly signed and sworn certificate of candidacy, nor shall any person be eligible for more than one office to be filled in the same election, and, if he files certificates of candidacy for more than one office, he shall not be eligible for any of them." On October 25, the petitioner filed a motion for reconsideration which was denied by the respondent Commission in its resolution of the same day. Whereupon, on October 26, the present petition for certiorari with preliminary mandatory injunction was filed in this Court. As prayed for in the petition, a writ of preliminary injunction was issued on October 29, ordering the respondent Commission to count and consider the votes cast in favor of the petitioner during the elections of November 8. The respondent Commission duly filed an answer. Mateo Garganera, a duly registered candidate for the office of mayor of Victorias, Negros Occidental, filed a petition for intervention and for preliminary injunction to suspend the proclamation of the winning candidate for the office of the mayor of Victorias. Intervenor Garganera adopted the answer filed by the respondent Commission. This Court in its resolution of November 18, admitted the petition for intervention but resolved to maintain the writ of preliminary mandatory injunction already issued.

The hearing was set for November 28, but none of the parties orally argued. Instead intervenor Garganera filed a memorandum in lieu of oral argument, and the petitioner filed a reply memorandum.

While section 31 of the Revised Election Code is definite in requiring the filing of a certificate of candidacy within the statutory period, and in providing that, if one files certificates of candidacy for more than one office, he shall not be eligible for any of them, neither said section nor any other section provides that the withdrawal of a certificate should be made on or before the last day for filing the same. We hold that petitioner's withdrawal of his

certificate of candidacy for provincial board member on September 10, was effective for all legal purposes, and left in full force Ma certificate of candidacy for mayor. We have already had occasion to rule that there is no provision of law forbidding withdrawal of candidacy at any time before the election (*Clutario vs. Commission on Elections*, G. E. No. L-1704, resolution of November 5, 1947).

The respondent Commission and intervenor Mated Garganera have cited the example of a candidate who may file certificates of candidacy for all the elective office within the statutory period, and subsequently withdraw all certificates of candidacy except one on the eve of the election; and they imagine the confusion to be confronted by the electorate if petitioner's theory is sustained. Assuming that there would be such confusion, we are not prepared to say that a prohibition against withdrawal of candidacy should be read into the law merely on that account. At any rate, the ease before us is very far from the example given. Indeed, petitioner's situation has all the earmarks of good faith and promptness, because no sooner had he filed his certificate of candidacy for provincial board member on September 9, at 5:00 p.m., then he withdrew said certificate the next day, at 6:40 a.m.; and this gave the electorate full fifty-nine days to know and determine the office for which the petitioner was running. That no confusion resulted from his withdrawal, is borne out by the fact of record that the petitioner was not voted upon as candidate for member of provincial board of Negros Occidental in any municipality of said province. On the other hand, it is very doubtful whether the great mass of voters ever bother about knowing who are the candidates for the different elective offices through their certificates of candidacy; and except perhaps the Commission on Elections and other election officials, the electorate come to know the various candidates in any election through the latter's own campaigns, announcements, posters, circulars and cards.

What is more, we cannot be blind to the fact, also shown by the record, that the herein petitioner received more votes than his only political opponent, intervenor Mateo Garganera; and if the position of the respondent Commission should be adopted, at least the majority of the voters of Victorias, Negros Occidental, would have been deprived of their choice.

Wherefore, the petition for certiorari is hereby granted, the resolutions of the respondent Commission on Elections of October 18 and 25, 1955 declared null and void, and the writ of preliminary mandatory injunction heretofore issued made permanent. So ordered with costs.

Padilla, Bautista, Angelo, Labrador, and Concepcion, JJ., concur.

Reyes, A., J., concurs in the result.

CONCURRING:

MONTEMAYOR, J.,

With the majority I vote on the ground that there is reason to believe as claimed by petitioner that his certificate of candidacy for the office of provincial board member was filed by mistake, as evidenced by his immediate withdrawal of said certificate of candidacy or rather the following day. Had he made the withdrawal later, especially if much later, so as to justify a suspicion or inference that the withdrawal was not to correct an honest mistake, but rather, because after say, studying the situation, he believed he had more chances of getting elected Mayor, the office for which he had filed his other certificate of candidacy, than for the other office, then I would hold that the Commission on Elections was right in declaring petitioner eligible for neither office—that of Mayor and member of the provincial board,

CONCURRING:**REYES, J. B. L., J.,**

I concur solely on the ground that the withdrawal of petitioner's candidacy for member of the provincial board was filed on September 10, at 9:40 a.m., so close to the last day for filing certificates of candidacy (September 9) that to all intents and purposes he was only a candidate for one post, that of mayor of Victorias. I reserve my vote as to whether he would be entitled to have the withdrawal of his candidacy to the provincial board considered if he had delayed filing the same much beyond September 9.

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