

JOSE P. BUENVIAJE, NAZARIO O. FERNANDEZ, AND FELIXBERTO E. BAYANI, IN HIS CAPACITY AS ELECTION REGISTRAR OF CAINTA, RIZAL, PETITIONERS, VS. THE HONORABLE JUDGE BENJAMIN H. AQUIN...

G.R. No. L-34254. October 30, 1971

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

In this original action for prohibition, the Court dismisses the petition and holds that where the applicants-voters were in fact "refused registration" because the precincts where they sought to apply for registration had run out of registration forms, respondent court properly took cognizance and jurisdiction over the inclusion petitions, contrary to petitioners' claim that such inclusion proceedings may not be filed "where no application for registration has been filed at all."

The twenty inclusion petitions[1] were filed on October 14, 1971 with respondent court on behalf of 146 applicants seeking a judicial order for their inclusion in the permanent lists of voters of their corresponding precincts in the municipality of Cainta, Rizal. They averred that notwithstanding their being qualified voters, they were refused registration when they presented themselves for re-registration on October 9, 1971 (the last day for registration of voters at the precinct level), for the reason that the boards of election inspectors had run out of registration forms.

Petitioners Jose P. Buenviaje and Nazario O. Fernandez, as candidates for mayor and vice-mayor, respectively, and their co-petitioner, Felixberto E. Bayani, as election registrar and election registration board chairman of the municipality of Cainta, intervened in the proceedings. While taking no issue on the facts, petitioners raised two purely legal questions challenging respondent court's jurisdiction, as follows: (1) Section 136 of the Election Code of 1971, Republic Act 6388, on inclusion proceedings, "has no application to situations such as the present where no application at all has been filed" and (2) the personal notices served on October 14, 1971 on the board of inspectors for the hearing set on October 22, 1971 at 8:30 a. m. was short of the ten-day notice allegedly required by section 139 (b) of the code and constituted a "jurisdictional defect."

Upon respondent court's upholding its jurisdiction, petitioners filed the present petition on October 25, 1971, which was heard by the Court on October 28, 1971 due to its urgent nature.[2]

The Court finds the issues raised by petitioners to be without merit.

1. On the first issue, it is quite obvious from the pertinent provisions of section 136 of the code that the previous filing of an application for registration by the voter is not a condition sine qua non or a jurisdictional requirement for the voter-applicant to file an inclusion petition thereunder. The cited section reads:

"SEC. 136. Application for inclusion of voter in the permanent list. -- Any person who has been refused registration or whose name has been stricken out from the permanent list of voters may at any time except sixty

days before a regular election or twenty-five days before a special election apply to the proper court for an order directing the election registration board or the board of inspectors as the case may be, to include or reinstate his name in the permanent list of voters, attaching to his application for inclusion the certificate of the election registration board or the board of inspectors regarding his case and proof of service of a copy of his application and of the notice of the hearing thereof upon a member of said board.[3]

X X X

Those who have been refused registration because of an adverse decision of the election registration board or the board of inspectors on their application for registration would of course have the application that petitioners lay so much stress on. Similarly, those already registered but whose names have been stricken out from the permanent lists would have no trouble meeting petitioners' self-conjured condition of a pre-existing application for registration.

But where the voter-applicants have been refused registration because of an admitted shortage of registration forms as properly certified to by the boards of election inspectors and they could not fill up any applications because no forms were forthcoming notwithstanding their waiting for them up to the last hour of October 9, 1971, it would be imposing an impossible condition - *lex non intendit aliquid impossibile* - to require that their petitions for inclusion must be based on and accompanied by voters applications which were never furnished them in the first place.

2. It is elementary that where a qualified voter has done everything required of him to register, the failure of the election officers to do their part in any detail -- here, the failure to supply the necessary registration forms -- cannot be invoked to deprive the voter of his fundamental and constitutional right to vote. And such failure to have the forms, if willful, could be cause for charging the election registrar of the serious election offense under section 231, par. 6 of the code, which so punishes "(A)ny person who delays, or hinders or obstructs another from registering as a voter or from taking steps leading thereto."

At the hearing of this case, it was brought out clearly that election registrars, such as petitioner registrar at bar, need to undergo a basic reorientation to appreciate that their main duty under the law is to help qualified voters duly register in the permanent list of voters so that they may be enabled to exercise their sacred right to vote, rather than place obstacles to their proper registration and resist their earnest efforts to secure judicial orders for their inclusion.

For according to petitioners, voters-applicants should first avail of the administrative remedy of requesting the Comelec authorities for the application forms and then file mandamus proceedings, if necessary, to obtain such registration forms, which must then be duly accomplished and processed (notwithstanding the lapse of the only day for registration of voters at the precinct level on October 9, 1971) before the voters-applicants may be allowed to institute inclusion proceedings. Such a tedious bureaucratic approach, of course, is the surest way of discouraging any qualified voter to register and defeating his right to register and vote.

3. Accordingly, the Court issued at the hearing a summary order to petitioner registrar to furnish respondent court by that same afternoon with 146 sets of CE Form No. 1 (Voters Registration Record) and the corresponding Identification Cards (CE Form No. 2) to be used in connection with and for proper identification of the 146 applicants for inclusion in the proceedings below, which was duly complied with as per manifestation filed on the same day. (It need only be mentioned that since the registrar's preoccupation was that the applicants-voters should accomplish the registration forms for proper identification before the courts may order their inclusion, he should have furnished on his own initiative such registration forms to respondent court without need of this Court's order.)

With the registration forms now available, respondent court may order, if practicable, the boards of election inspectors of the sixteen precincts involved in the twenty inclusion proceedings to re-convene and process the applications as accomplished by applicants-voters, submitting the results to respondent court which may then issue or not the corresponding inclusion order. If the boards of inspectors may no longer be convened due to the shortness of the time, respondent court may call upon the election registrar for assistance in passing upon the applications and thereafter rule upon the inclusion petitions.

4. What has been set out in the preceding paragraph 3 is the ideal procedure, so that the application forms as accomplished by the voters-applicants and granted by respondent court may in due course be transmitted to the boards of inspectors for incorporation into the precinct book of voters, as if the boards had favorably acted upon them in the first instance under section 114 of the Code.[4] But such procedure may not always be practicable in other parts of the country, where additional registration forms may not be as easily secured and little time is left before the election. In such event, the court of first instance should not be hampered by the lack of such official forms, and may avail, when practicable, of impro-vised forms and other means such as the voter's photographs, sig-natures, etc. for their proper identification. It is vested with ample authority to hear the inclusion petition and on the basis of the pro-ceedings before it -- which it is enjoined by law "to hear and decide without delay" and to render its decision "within six hours after the hearing and within ten days from the date of its filing or registration in court"[5] to issue the corresponding order of inclusion. The voter upon presentation of a certified copy of such order and upon proper identification -- when such order is issued after the precinct book of voters has already been closed and sealed -- shall be entitled to vote on election day.[6]

5. Petitioners' submittal on their second issue, to wit, that a ten-day notice is allegedly required by section 139 (b) of the Code, even when notice is given, as required by the code in the first ins-tance, by registered mail or by personal delivery, is patently against a plain reading of the law.[7] All that is obviously required is reasonable notice, to enable the parties affected to be present on the day set for the hearing. By the very terms of the statute, it is only when such mode of notice is "not practicable," that notice may be given "by posting a copy in a conspicuous place within the municipality, at least ten days prior to the day set for the hearing."

ACCORDINGLY, the petition is hereby dis-missed, and private petitioners are sentenced to pay the costs and expenses of this suit, which expenses respondent court is directed to assess, together with such costs and expenses as it may award respondents-voters in the inclusion proceed-ings below under section 139 (d) of the 1971 Elec-tion Code. 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 enjoined to forthwith act on and resolve the pending inclusion proceedings before it, conformably to paragraphs 3 and 4 hereinabove, towards the end that no qualified applicant may be deprived of the right of suffrage. SO ORDERED.

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

[1] Docketed as Election Cases Nos. 488 to 499, 613 to 617 and 1208 to 1210 of the Court of First Instance of Rizal.

[2] The Court required respondents to answer the petition but expressly authorized respondent court to continue with the inclusion proceedings before it in view of their importance and the little time left before elec-tion day, November 8, 1971. In this manner, the applicants-voters' petitions for inclusion could be timely heard and resolved by respondent court pending the Court's resolution hereof. Thus, if the Court dismissed the petition, no time would have been lost and no prejudice caused, and the applicants ordered included would not be wrongfully

disenfranchised. Contrariwise, the Court would annul any inclusion order issued without jurisdiction.

[3] Emphasis furnished.

[4] "If there is no challenge to the applicant's right to register, or if there is one and the board decides in favor of his registration, the application shall be approved and shall be incorporated into the precinct book of voters. x x x"

[5] Section 139 (g), R. A. No. 6388.

[6] Section 136, R.A. No. 6388, second paragraph.

[7] "(b) Notices to the members of the election registration board, board of inspectors and to the challenged voters shall state the place, date and hour in which such application shall be heard, and such notice may be made by sending a copy thereof by registered mail or by personal delivery to them, or by leaving it in the possession of a person of sufficient discretion in the residence of the said persons, or, in the event that the foregoing procedure is not practicable, by posting a copy in a conspicuous place within the municipality, at least ten days prior to the day set for the hearing."

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