

THE NACIONALISTA PARTY, MARCELO ADDURU, DEMOCALO ALONTO, PEDRO C. HERNAEZ, TRINIDAD F. LEGARDA, ALEJO MABANAG, CLARO M. RECTO, JOSE O. VERA AND JOSE VELOSO, PETITIONERS, VS. VICE...

G.R. No. L-3474. December 07, 1949

Ponente: MORAN, C.J.

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MORAN, C.J.:

This is a special civil action for prohibition filed by the Nacionalista Party and its official candidates for senators against Vicente de Vera, Chairman of the Commission on Elections, to enjoin him from sitting or taking part in the deliberations of said Commission in connection with the elections of November 8, 1949, on two grounds: (1) that he is the father of Teodoro de Vera one of the candidates of the Liberal Party for the position of senator in the last elections and, for that reason, he is disqualified from acting on all matters connected with said elections; and (2) that his appointment as Chairman of the Commission on Elections is a violation of the Constitution and, therefore, it is void ab initio.

I

Rule 126, section 1, of the Rules of Court, invoked by petitioners to disqualify the respondent, is as follows:

"SECTION 1. Disqualification of judges.—No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record."

Upon the other hand, section 2 of said Rule 126, providing the procedure to be followed in the disqualification of judges or judicial officers, is as follows:

"SEC. 2. Objection that judge disqualified, how made and effect.—If it be claimed that an official, is disqualified from; sitting as above provided, the party objecting to his competency may, in writing, file with the official his objection, stating the grounds therefor, and the official shall thereupon proceed with the trial, or withdraw therefrom, in accordance with his determination of the question of his disqualification. His decision shall be forthwith made in writing and filed with the other papers in the case, but no appeal or stay shall be allowed from, or by reason of, his decision in favor of his own competency, until after final judgment in the case."

Under this provision, the party seeking the disqualification of a judge or a judicial officer must, in writing, file with said official his objection, stating the grounds therefor, and if the objection is denied, the remedy is an appeal to be taken after final judgment is rendered in the case. For this reason, the petition for prohibition is improper.

This is on the assumption that the Rules of Court are applicable to the Commission on Elections, but in truth they are not. Section 13, Article VIII of the Constitution granted to the Supreme Court "the power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase, or modify substantive rights." Courts, as referred to in this Constitutional provision, are those bodies vested with judicial power by Article VIII, section 1 of the Constitution, and they do not include the Commission on Elections, which, in a separate Article (Article X) of the Constitution, is created as an independent administrative body with the "exclusive charge of the enforcement and administration of all laws relative to the conduct of elections," with the power to decide "all administrative questions affecting elections save those involving the right to vote." Under the Constitution, the Supreme Court has no general powers of supervision over the Commission on Elections except those specifically granted by the Constitution, that is, to review the decisions, orders and rulings of the Commission which may be brought up properly before the Supreme Court.

If it is true as suggested that the Rules of Court have been adopted in a suppletory character by the Commission on Elections, such adoption can have no reference but to those rules that are necessary for the functioning of the Commission and which are not inconsistent with the nature of its proceedings, and therefore it does not include the rules of disqualification of judicial officers. The Commission has no authority to adopt or promulgate rules of such nature.

We hold, therefore, that the Rules of Court are not applicable to the Commission on Elections, and consequently whether or not a Commissioner may or may not act on matters in which a son of his is directly interested, is a question of decorum and ethics for him exclusively to decide. The silence of the Constitution in that regard may well be interpreted to mean that all prohibition to that effect is unnecessary because the persons to be selected for such delicate positions in the Commission should be of such high morality as to exclude all probability of transgression of simple rules of decency or good taste.

In the instant case, respondent, in his answer, avers that he has disqualified himself from acting as Chairman of the Commission in all matters in which his son has a direct interest. There is no showing that this averment is not true.

II

The second ground invoked by the petitioners is that respondent's appointment to the Chairmanship of the Commission on Elections is void ab initio because he was already a member of the Commission when he was appointed its chairman and such appointment is in fact a reappointment, which is expressly prohibited by the Constitution. In this jurisdiction the writ of prohibition cannot be availed of as a substitute for quo warranto. The ground invoked by petitioners would be proper in quo warranto proceedings but not in a petition for prohibition. The writ of prohibition has been allowed in the Philippines, not only against courts and tribunals in order to keep them within the limits of their own jurisdiction and to prevent them from encroaching upon the jurisdiction of other tribunals, but also, in appropriate cases, against an officer or person whose acts are without or in excess of his authority. Thus, a writ of prohibition has been issued against the Director of Posts who attempted to do an act that was offensive to the Constitution (*Aglipay vs. Ruiz*, 64 Phil., 201), or against the Commissioner of Civil Service who attempted to conduct an investigation that was violative of the Constitution (*Planas vs. Gil*, G. R. No. 46440, Jan. 18, 1939, 37 Off. Gaz., 1228),^[1] or against the City of Manila, which attempted, to enforce an ordinance which was null and void (*Rodriguez vs. City of Manila*, 46 Phil., 171). But when the petition for prohibition seeks to inquire into a person's title to an office which he is holding under color of right, it has been denied upon the ground that quo warranto is the proper remedy. Thus, in *Takyo vs. Capistrano*, 53 Phil., 866, a petition for prohibition was filed against Judge Capistrano to enjoin him from taking cognizance of certain civil

and criminal cases on the ground that he was more than 65 years of age and under the law then in force he had ceased to be a judge. This Court held that Judge Capistrano was a judge de facto and the remedy prayed for could not be granted for the reason that: "The rightful authority of a judge, in the full exercise of his public judicial functions, cannot be questioned by any merely private suitor, nor by any other, excepting in the form especially provided by law. A judge de facto assumes the exercise of a part of the prerogative of sovereignty, and the legality of that assumption is open to the attack of the sovereign power alone. Accordingly, it is a well established principle, dating from the earliest period and repeatedly confirmed by an unbroken current of decisions, that the official acts of a de facto judge are just as valid for all purposes as those of a de jure judge, so far as the public or third persons who are interested therein are concerned. The rule is the same in civil and criminal cases. The principle is one founded in policy and convenience, for the right of no one claiming a title or interest under or through the proceedings of an officer having an apparent authority to act would be safe, if it were necessary in every case to examine the legality of the title of such officer up to its original source, and the title or interest of such person were held to be invalidated by some accidental defect or flaw in the appointment, election or qualification of such officer, or in the rights of those from whom his appointment or election emanated; nor could the supremacy of the laws be maintained, or their execution enforced, if the acts of the judge having a colorable, but not a legal title, were to be deemed invalid. As in the case of judges of courts of record, the acts of a justice de facto cannot be called in question in any suit to which he is not a party. The official acts of a de facto justice cannot be attacked collaterally. An exception to the general rule that the title of a person assuming to act as judge cannot be questioned in a suit before him is generally recognized in the case of a special judge, and it is held that a party to an action before a special judge may question his title to the office of judge on the proceedings before him, and that the judgment will be reversed on appeal, where proper exceptions are taken, if the person assuming to act as a special judge is not a judge de jure. The title of a de facto officer cannot be indirectly questioned in a proceeding to obtain a writ of prohibition to prevent him from doing an official act, nor in a suit to enjoin the collection of a judgment rendered by him. Having at least colorable right to the office his title can be determined only in a quo warranto proceeding or information in the nature of a quo warranto at suit of the sovereign." (15 R.C.L., pp. 519-521.)

It is unnecessary to say that the exception as to a special judge is not applicable to respondent who is not a special Commissioner.

In the United States, the prevailing rule is that "the writ of prohibition, even when directed against persons acting as judges or other judicial officers, cannot be treated as a substitute for quo warranto or be rightfully called upon to perform any of the functions of that writ. If there is a court, judge, or officer de facto, the title to the office and the right to act cannot be questioned by prohibition. If an intruder takes possession of a judicial office, the person dispossessed cannot obtain relief through a writ of prohibition commanding the alleged intruder to cease from performing judicial acts, since in its very nature prohibition is an improper proceeding by which to determine the title to an office. And the writ of prohibition will not issue against a judge de facto on the ground that the statute purporting to confer authority upon the governor to appoint him is unconstitutional." (42 Amer. Jur., 156.)

We hold, therefore, that quo warranto and not prohibition is the proper remedy to inquire into the validity of respondent's appointment as Chairman of the Commission on Elections. And we would stop here were it not because there is apparently some divergence of opinion as to the true import of the constitutional provisions concerning the appointment of Commissioners of Elections, and some members of the Court have decided to state their individual opinions on the matter. Under these circumstances, the majority deems it advisable to also express its views:

Section 1, Article X of the Constitution reads as follows:

"There shall be an independent Commission on Elections composed of a Chairman and two other Members to be appointed by the President with the consent of the Commission on Appointments, who shall hold office for a term of nine years and may not be reappointed. Of the Members of the Commission first appointed, one shall hold office for nine years, another for six years, and the third, for three years. The Chairman and the other Members of the Commission on Elections may be removed from office only by impeachment in the manner provided in this Constitution."

Let us analyze the first two sentences contained in this provision, which concern the appointment of Commissioners of Elections. The first sentence reads: "There shall be an independent Commission on Elections composed of a Chairman and two other Members to be appointed by the President with the consent of the Commission on Appointments, who shall hold office for a term of nine years and may not be reappointed." (Italics ours.) It must be noticed from this provision that the prohibition against reappointment comes as a continuation of the requirement that the Commissioners shall hold office for a term of nine years. This imports that the Commissioners may not be reappointed only after they have held office for nine years. Reappointment is not prohibited when a Commissioner has held office only for, say, three or six years, provided his term will not exceed nine years in all.

Upon the other hand, the second, sentence provides that "Of the Members of the Commission first appointed, one shall hold office for nine years, another for six years, and the third for three years." The evident purpose of this provision is to place in the Commission a new member every three years. And this purpose must be respected in every reappointment that is to be made in favor of a Commissioner who has held office for less than nine years. It may then be said as a fair interpretation of the Constitution that reappointment may be made in favor of a Commissioner who has held office for less than nine years, provided it does not preclude the appointment of a new member every three years, and provided further that the reappointee's term does not exceed nine years in all.

In order to carry out the purpose of the Constitution of placing in the Commission a new member every three years, it is essential that after the first Commissioners have been appointed, every subsequent appointment shall so fix the appointee's term of office as to maintain the three years difference between the dates of expiration of the respective terms of the incumbents. And this can be done if after the appointments of the first three Commissioners, the successor of any one of them who ceases prior to the expiration of his term, be appointed only for the unexpired portion of that term. Of course, when a Commissioner ceases because of the expiration of his term his successor must be appointed for a term of nine years; but when he ceases on other grounds prior to the expiration of his term, his successor must be appointed only for the unexpired portion of that term, otherwise the appointment would be offensive, to the Constitution.

In July, 1945, three Commissioners were appointed: Jose Lopez Vito, as Chairman, for a term of nine years; Francisco Enage, as Member, for a term of six years; Vicente de Vera, as Member, for a term of three years. Apparently, these were considered as the first Commissioners appointed under the Constitution. Under the interpretation above stated, Vicente de Vera cannot be reappointed to succeed himself upon the expiration of his term of three years because that would preclude the appointment of a new member after such period of three years, and would, furthermore, increase his term to twelve years, since, as above indicated, upon the expiration of his term his successor must be appointed for nine years. But the chairmanship of the Commission became vacant in 1947, by the death of Chairman Jose Lopez Vito, and Commissioner Vicente de Vera was promoted to occupy this vacancy for the unexpired term of the former incumbent. There is nothing in that promotion that is offensive to the Constitution for it does not increase De Vera's term of office to more than nine years nor does it preclude the appointment of a new member upon the expiration of De Vera's first term of three years.

It is maintained that the prohibition against reappointment applies not only to the Commissioner appointed for

nine years, but also to those appointed for a shorter period, because the reason underlying the prohibition is equally applicable to them, the prohibition being, according to this theory, intended to prevent the Commissioners from being exposed to improper influences that are apt to be brought to bear upon those aspiring for reappointment. It is, however, doubtful whether this apparently persuasive reasoning is fully justified and supported by the wording of the Constitution. As above stated, the language of the Constitution does not warrant the interpretation that the prohibition against reappointment applies not only to Commissioners who have held office for nine years but also to those appointed for a lesser term. Upon the other hand, reappointment is not the only interest that may affect a commissioner's independence, for he may also aspire to another position in the Government that is higher and better paid, and that also may affect his independence. And it is perhaps useless to prohibit reappointment to the same office if appointment to higher and better paid positions is not at the same time prohibited. This, apart from the consideration that reappointment is not altogether disastrous. A Commissioner, hopeful of reappointment may strive to do good. Whereas, without that hope or other hope of material reward, his enthusiasm may decline as the end of his term approaches and he may even lean to abuses if there is no higher restraint in his moral character. Moral character is no doubt the most effective safeguard of independence. With moral integrity, a commissioner will be independent, with or without possibility of reappointment. Without moral integrity, he will not be independent no matter how emphatic the prohibition on reappointment might be. That prohibition is sound only as to a Commissioner who has held office for nine years, because after such a long period of so heavy and taxing work, it is but fair that the venerable Commissioner be given either a rest well earned or another honorable position for a change.

For all the foregoing considerations, the petition is denied with costs against petitioners.

Bengzon, Padilla, and Torres, JJ., concur.

Montemayor, and Reyes, JJ., concur in the result.

[1] 67 Phil., 62.

CONCURRING

OZAETA, J.:

I concur in the denial of the petition praying that the respondent Hon. Vicente de Vera "be ordered to inhibit, himself and/or permanently enjoined from taking part in any of the deliberations of the Commission on Elections relative to the national polls of November 8, 1949."

The petition is based on two grounds: (1) That the respondent is disqualified under section 1 of Rule 126 of the Rules of Court for the reason that Mr. Teodoro de Vera, one of the candidates of the Liberal Party for the position of senator in the said elections, is the son of the respondent; and (2) that respondent's term of office as member or chairman of the Commission on Elections expired in July, 1948.

I. As to the first ground.—I concede that the provision of section 1 of Rule 126 that no judge or judicial officer shall sit in any case in which he, or his wife or child, is in any way pecuniarily interested is legally and morally binding upon any officer who by law is empowered to act as judge between contending parties; for to disregard that legal and moral precept would be shocking to the common conscience of mankind.

The respondent shows in his answer that he has followed and intends to follow said rule by inhibiting himself from taking part in any deliberation of the Commission on matters in which the direct interest of his son Teodoro

de Vera as a candidate is involved. Petitioners have not shown any specific instance contradicting respondent's assertion.

But even if the respondent should decide in favor of his own competency and refuse to inhibit himself in any specific case wherein the interest of his son as a candidate is involved, the remedy of the aggrieved party would not be prohibition or injunction but a petition for review in due course. Section 2 of Rule 126 says:

"If it be claimed that an official is disqualified from sitting as above provided, the party objecting to his competency may, in writing, file with the official his objection, stating the grounds therefor, and the official shall thereupon proceed with the trial, or withdraw therefrom, in accordance with his determination of the question of his disqualification. His decision shall be forthwith made in writing and filed with the other papers in the case, but no appeal or study shall be allowed from, or by reason of, his decision in favor of his own competency, until after final judgment in the case."

II. As to the second ground.—It was admitted during the hearing by counsel for the respondent that the latter was appointed by President Osmeña in July, 1945, as member of the Commission on Elections for a term of three years, expiring in July, 1948; but that after the death of the then chairman of the Commission, Jose Lopez Vito, in 1947, the respondent was appointed chairman to serve the remaining seven years of Lopez Vito's unexpired term.

In view of the prohibition in the Constitution against the reappointment of a member of the Commission on Elections, I am of the opinion that respondent's term of office expired in July, 1948, notwithstanding his subsequent appointment as chairman in 1947. His tenure of office, whether as member or as chairman of the Commission could not be extended beyond the original term of three years without violating the constitutional prohibition against reappointment. This in effect is admitted by the respondent; for in his answer, instead of attempting to justify the legality of his appointment as chairman, he merely alleges that he "is at least a de facto officer as he has already been acting as Chairman of this Commission under color of a known appointment and as such his acts are considered valid."

That much can be conceded. Until his successor is appointed and has qualified, or until he is ousted through quo warranto proceedings, respondent holds over as a de facto officer.

"An officer is not prevented from continuing to discharge the duties of his office after his term where no successor has been chosen, even by a provision of the Constitution limiting the term of office and making an incumbent ineligible to re-election, or declaring that the duration of an office should not exceed a given number of years." (43 Am. Jur., Public Officers, sec. 161, page 19.)

"In the absence of any constitutional or statutory regulation on the subject, the general rule is that an incumbent of an office will hold over after the conclusion of his term until the election and qualification of his successor." (Tayko vs. Capistrano, 53 Phil., 866.)

The respondent is not a usurper, or one "who undertakes to act officially without any color of right." (Tayko vs. Capistrano, *supra*.)

Tayko vs. Capistrano is on all fours with the instant case. That was an action for prohibition originally instituted in this court upon the allegation that Judge of First Instance Nicolas Capistrano of Negros Oriental had reached the age of 65 years and, therefore, under the provision of section 148 of the Administrative Code, as amended, was disqualified from acting as a judge of the Court of First Instance. This court denied the petition for prohibition on the ground that the respondent judge was a de facto officer, whose title could not be indirectly questioned in a proceeding to obtain a writ of prohibition to prevent him from doing an official act.

The fact that the office of member or chairman of the Commission on Elections was created by the Constitution

while that of a judge of first instance was created by a statute, affords no material difference in the result of the two cases, for a valid statute is as obligatory as the Constitution.

This case differs from G. R. No. L-3452, Nacionalista Party vs. Angelo Bautista, in that the latter had no color of title as acting member of the Commission on Elections, inasmuch as his designation as such was made not only without authority of law but contrary to the provisions of the Constitution, and, therefore, null and void ab initio.

DISSENTING

PARAS, J.:

I dissent.

As it is admitted by counsel for the respondent that the Rules of Court, in so far as they are pertinent and applicable, have been made a part of the rules of the Commission on Elections, Rule 126 on disqualification of judicial officers should guide the respondent in determining whether he should disqualify himself as a member of the Commission. It is doubtless in view of the precepts embodied in said Rule that the respondent had heretofore inhibited himself in all matters that might affect his son as a candidate of the Liberal Party for senator, although he dissented from the resolution of the Commission recommending to the President the suspension of the election in some provinces. While the reasons for the Rule on disqualification are fundamental and unassailable, the propriety of an inhibition is in the main addressed to the taste and conscience of the officer concerned. In other words, the latter is in the first place called upon to determine, having in view his human frailties, whether he should sit in any given case.

If the respondent's disqualification cannot be predicated, with moral or legal certainty, on Rule 126, he should be disqualified on the ground presently to be stated. The Commission on Elections is a creature of the Constitution which provides (Article X, section 1) that the Commission shall be composed of a Chairman and two Members appointed by the President, with the consent of the Commission on Appointments, for a term of nine years without reappointment. The Constitution, however, provides that the first members of the Commission shall be appointed, one for nine years, another for six years, and the third for three years. Although the term of a member is nine years, in my opinion the members first appointed after the Constitution had taken effect, cannot be reappointed and their terms cannot exceed those fixed in their respective appointments.

The first members of the Commission had all faded out of the scene. After the liberation of the Philippines, and upon reorganization of the Government, and entirely ignoring appointments made before the war, three members were appointed, and these appointments were treated as though they were the first under the Constitution as clearly evidenced by the fact that Chairman Jose Lopez Vito was appointed for nine years, member Francisco Enage for six years, and member Vicente de Vera for three years. These appointments should technically be considered as original and first appointments under the Constitution if its purpose is to be accomplished. Accordingly, the term of respondent De Vera expired in July, 1948. There is of course no legal objection to the appointment of the respondent as Chairman upon the death of Lopez Vito, but said appointment could not have the effect of extending his term beyond the 3-year period of his original appointment. The Chairman is also a member, and chairmanship is indeed not taken into account when the Constitution ordains that "of the Members of the Commission first appointed, one shall hold office for nine years, another for six years, and the third for three years." Otherwise, the periodical change contemplated in the Constitution can be avoided by merely rotating the chairmanship among the three original members. The periodical set-up of the Commission on Elections has a parallel in the Senate. The Constitution fixes the term of Senators at six years, but provides that the first senators

elected thereunder shall, in the manner provided by law, be divided equally into three groups, the first group to serve for a term of six years, the second for four years, and the third for two years. None of those first elected, whose terms were fixed by law at two years, were allowed to continue in office beyond two years, except of course those who were reelected, reelection not being prohibited.

The same considerations that have led this Court to grant necessary relief in G. R. No. L-3452, *Nacionalista Party vs. Angelo Bautista*,^[1] as Solicitor General of the Philippines, should govern the case at bar.

Tuason, J., concurs.

[1] 85 Phil., 101.

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