

**MACARIO FESTIN, BENJAMIN FAMILARA, CARLITO FETALCURIN,
GALICANA FORMADERO, SEGUNDO FABABAIR, ROLLO FAINSAN,
DAVID FETALVERO, FRANCISCO FORFIEDA, JOSE PAZ AND CARLITO
FONTE, PETI...**

G.R. No. L-57351. January 16, 1982

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

The congenital infirmity from which this quo warranto suit suffers is quite obvious considering that on the facts of the case and the applicable law, this Court had rendered a decision as far back as June 26, 1981 in *Faderanga v. Commission on Elections*.^[1] As expressly admitted by petitioners, "a decision in favor of the respondents was promulgated on June 26, 1981, and received by herein petitioners at 5:25 p.m. of the same day, hence this petition for quo warranto."^[2] What was not stated in the petition is that the entry of judgment was made as far back as July 13, 1981. This is a settled matter then, the parties being conclusively bound by the ruling of this Court. There can be no other judgment except that of dismissal.

The filing of this suit for quo warranto, an ingenious device resorted to by counsel, is equally indicative of a lack of respect for a final decision of this Court and a reflection of his grasp of the law. For the principal petitioners in this proceeding, Macario Festin and Carlito Fetalcurin were the respondents along with the Commission on Elections in the above-cited decision. Respondents, on the other hand, were the then petitioners. Their claim to continue in their respective municipal offices was sustained, having been duly proclaimed and occupying their positions, subject to an election protest or a quo warranto proceeding. A pre-proclamation controversy was thus put to an end in accordance with authoritative rulings. This petition on its face is thus a transparent attempt at evasion which is not to be tolerated. An extended opinion then would be quite appropriate.

The facts as set forth in that decision, reiterated in the present petition, follow: "The case arose from a petition filed on January 18, 1980 by private respondents with respondent Commission on Elections seeking the disqualification of petitioners from being candidates respectively for mayor, vice mayor and members of the Sangguniang Bayan of Banton, Romblon. It was alleged that they changed their party affiliation from KBL to NP within six (6) months before the local election. On the date of the election, such petition was still undecided. Petitioners won and on January 31, 1980 were proclaimed duly elected respectively as mayor, vice mayor and members of the Sangguniang Bayan of Banton, Romblon. Petitioners were informed that respondent Commission on Elections sent a telegram to the Registrar of Banton, Romblon to suspend the proclamation of the petitioners. It was, however, received only late in the same day of January 31, 1980 after the proclamation. It was not until February 28, 1980 that such petition for disqualification was resolved. It was denied for lack of sufficient evidence. Accordingly, on March 3, 1980, the Registrar of Banton, Romblon, advised petitioners that all winning candidates would be proclaimed anew on the afternoon of that day. Thus, for the second time, on March 3, 1980, petitioners were proclaimed. Only then did petitioners take their oaths of office. There was a motion for reconsideration by private respondents with respondent Commission on March 19, 1980. An opposition was filed

by petitioners on April 17, 1980. It was their contention that no new issues, grounds or facts were raised therein. For them, the proclamation having attained the stage of finality, to reopen the proceedings would be tantamount to annulling it contrary to the 1978 Election Code. The motion for reconsideration was heard and submitted for resolution on September 29, 1980. Then, three months to the day, on December 29, 1980, as noted at the outset, respondent Commission reversed itself. Hence this certiorari and mandamus petition filed on January 19, 1981. A temporary restraining order was issued on January 20, 1981."[3]

There was, in such opinion, a reference to *Venezuela v. Commission on Elections*,[4] *Villegas v. Commission on Elections*,[5] and *Potencion v. Commission on Elections*[6] where this Court saw to it that an attempt to prolong a pre-proclamation controversy should not prosper. The opinion in *Faderanga* then went on to state: "This Court applied the doctrine, earlier noted, that such a stage having been reached, the proper remedy would be an election contest or a quo warranto petition as the case may be. In the language of *Aguinaldo v. Commission on Elections*: 'Since *Venezuela v. Commission on Elections*, this Court has invariably adhered to the principle that after the holding of the January 30, 1980 election, and a proclamation thereafter made, a petition to disqualify a candidate based on a change of political party affiliation within six months immediately preceding or following an election, filed with this Court after January 30, 1980, arising from a pre-proclamation controversy, should be dismissed without prejudice to such ground being passed upon in a proper election protest or quo warranto proceeding. Where, however, such constitutional provision had been seasonably invoked prior to that date with the Commission on Elections having acted on it and the matter then elevated to this Court before such election, the issue thus presented should be resolved.'"[7]

This excerpt from the opinion is equally relevant: "As a matter of fact, in *Arcenas v. Commission on Elections*, when petitioner, the defeated mayoralty candidate for Hermosa, Bataan instituted a certiorari proceeding alleging a grave abuse of discretion as respondent Commission *motu proprio* dismissed an action for disqualification of private respondent, the victor in such election, this Court found nothing objectionable in what was done. The Commission was sustained. That decision of this Court, rendered a month before the assailed resolution, ought to have furnished guidance. Respondent Commission should have denied the motion considering that as far back as March 3, 1980, petitioners were proclaimed and thereafter held and continue to hold the offices in question. That is not merely to abide by the authoritative pronouncements of this Court. It would be likewise in consonance with what the realities of the situation dictate. Even disregarding the first pronouncement, the Commission, apparently after considerable thought, had affirmed that as the victors in the election, petitioners had earned the right to be proclaimed. To upset the existing conditions in Banton, Romblon under the circumstances would not be conducive to stability. On the other hand, to follow the authoritative pronouncement of this Court and thus put an end to the pre-proclamation controversy, reserving the right to private respondents to pursue the matter in the appropriate election protest or quo warranto petition as the case may be, would be more in keeping with the orderly ways of the law. This is not to impugn the good faith of respondent Commission. It is merely to stress that in a choice of alternatives, what should guide its final disposition of a pre-proclamation controversy after the lapse of a considerable period is to accord respect to a proclamation made after due deliberation but, as noted above, without prejudice to a protest or quo warranto action to be filed, if the losing party chooses to pursue such remedy."[8]

To repeat, the petition must fail.

1. The finality of the above decision based on authoritative rulings notwithstanding, petitioners, who have no choice except to yield obedience, remain adamant. The dispositive portion in *Faderanga* cannot be any clearer: "[Wherefore], the petition is granted. The order of December 29, 1980 is nullified and set aside, amounting as it does to a grave abuse of discretion. The right of petitioners as duly elected officials in the various positions in question to continue as such is affirmed, subject, however, to private respondents, if so minded, instituting

an election protest or a quo warranto proceeding, as the case may be. For that purpose, they are given a period of fifteen (15) days after receipt of this decision. The restraining order of January 20, 1981 is hereby made permanent. This decision is immediately executory. No costs." [9] Principal respondents then, now petitioners, were not left without remedy. At their option, they could file "an election protest or a quo warranto proceeding, as the case may be. For that purpose, they are given a period of fifteen (15) days after receipt of this decision." [10] It was promulgated on June 26, 1981. They admitted having received a copy on the same day. They chose not to avail themselves of the remedy afforded them. Instead, undoubtedly upon advice of counsel, they instituted this quo warranto proceeding, alleging that there was a culpable violation of the Constitution construed in relation to Batas Pambansa Blg. 52 and Presidential Decree No. 1661 as amended. How flimsy and insubstantial is such a contention. That certainly is no way to escape from the binding force of a final decision. It calls to mind an observation by Cardozo that while orthodoxy is not always desirable, heterodoxy may be another name for ignorance - if not of something worse.

2. The law as to this particular controversy has thus been enunciated. To repeat, the parties, now petitioners and now respondents, who litigated the same matter in *Faderanga*, must abide by such judgment. As categorically stated in *Kabigting v. Acting Director of Prisons*: [11] "It need not be stated that the Supreme Court, being the court of last resort, is the final arbiter of all legal questions properly brought before it and that its decision in any given case constitutes the law of that particular case." [12] This Court has likewise noted the amplitude of its coverage. What is express as well as what is implied in a decision is included, to be implemented faithfully, no circumvention or evasion being allowed. [13] Recently, in *Bueno Industrial and Development Corporation v. R.C. Aquino Timber and Plywood Co., Inc.*, [14] it was noted how steadfast this Court has been in relying on such concept. [15]

3. Nor is this all. Notwithstanding the decision of this Court in *Faderanga*, now final, based on authoritative doctrines, counsel for petitioner, a certain Gilbert M. Fabella, had the temerity to state the following in his petition: "Respondents if allowed to continue holding the position as Mayor, Vice-Mayor and members of the Sangguniang Bayan of Banton, Romblon, in wanton violation of the constitutional prohibition in effect we would be creating an elective officers of a Municipality who are above the law by judicial fiat (underscoring ours)." [16] This highly-gratuitous statement is offensive not so much because of the lack of the proper respect owing this Court, imputing to it a judgment based solely on "judicial fiat," but even more so, because of its lack of appreciation of the controlling jural norms. Such a display of arrogance could, of course, be traceable to his inexperience as a legal practitioner having been admitted to the bar only on April 20, 1978. Evidently, he could have profited more from an intensive study in political law subjects as a student and thereafter during this brief period of his professional career. Obviously, he failed to do so. In addition to the previously-cited cases of *Venezuela*, *Villegas* and *Potencion*, the *Aguinaldo* decision, relied upon in *Faderanga*, likewise made mention of *Arcenas v. Commission on Elections* [17] and *Singco v. Commission on Elections*. [18] It provided the opportunity, therefore, for this Court to reiterate the principle with greater precision. Thereafter, *Laguda v. Commission on Elections* [19] applied the *Aguinaldo* doctrine. A reminder is, therefore, not out of place. Justice Laurel spoke of a "becoming modesty" [20] being a desirable trait in lower court judges. It applies as well to practitioners, especially so when the litigations entrusted to them may tax their ability to the utmost. While the circumstance of counsel for petitioner Gilbert M. Fabella being new in the profession may be mitigating, it cannot entirely exculpate him.

WHEREFORE, the petition is dismissed for lack of merit. Attorney Gilbert M. Fabella is hereby admonished to be more careful in his choice of language and to devote greater time, attention, and effort in the preparation of pleadings for submission to this Court. Let a copy of this admonition be spread on his record.

Teehankee, Fernandez, Guerrero, Abad Santos, De Castro, Melencio-Herrera, Ericta, Plana, and Escolin, JJ., concur. Barredo, J., concurs in a separate opinion. Concepcion, Jr., J., on leave. Makasiar and Aquino, JJ., no part.

- [1] G.R. No. 55938.
- [2] Petition, III, par. 10.
- [3] G.R. No. 55938, June 26, 1981.
- [4] G.R. No. 53532, July 25, 1980, 98 SCRA 790.
- [5] G.R. No. 52463, Sept. 4, 1980, 99 SCRA 582.
- [6] G.R. No. 52527, Sept. 4, 1980, 99 SCRA 595.
- [7] G.R. No. 55938, June 26, 1981.
- [8] Ibid, 3-4.
- [9] Ibid, 4.
- [10] Ibid.
- [11] 116 Phil. 589 (1962).
- [12] Ibid, 594.
- [13] Cf. Sanchez v. Court of Industrial Relations, L-26932, March 28, 1969, 27 SCRA 490. The Sanchez opinion cited People v. Olarte, L-22465, Feb. 28, 1967, 19 SCRA 494. The Olarte opinion in turn finds support in Fernando v. Crisostomo, 90 Phil. 585 (1951); Padilla v. Paterno, 93 Phil. 884 (1953); Samahang Magsasaka, Inc. v. Chua Guan, 96 Phil. 974 (1955); People v. Penuila, 103 Phil. 992 (1958) and Pomeroy v. Director of Prisons, 107 Phil. 50 (1960).
- [14] L-25747, August 21, 1980, 99 SCRA 209.
- [15] Cf. Libudan v. Gil, L-21163, May 17, 1972, 45 SCRA 17; Palad v. Governor of Quezon Province, L-24302, Aug. 18, 1972, 46 SCRA 354; Rodriguez v. Director of Prisons, L-35386, Sept. 28, 1972, 47 SCRA 153; Mangayao v. De Guzman, L-24787, Feb. 22, 1974, 55 SCRA 540; National Shipyard and Steel Corporation v. CIR, L-31852, June 28, 1974, 57 SCRA 642; Cosmos Foundry Shop Workers Union v. Lo Bu, L-40136, March 25, 1975, 63 SCRA 313; National Mines and Allied Workers Union v. Luna, L-46722, June 15, 1978, 83 SCRA 607; Villanueva v. WCC, L-44108, July 31, 1978, 84 SCRA 423; Gokongwei, Jr. v. Securities and Exchange Commission, L-45911, April 11, 1979, 89 SCRA 336.
- [16] Petition, par. 14. Even from the standpoint of grammar, such allegation suffers from an infirmity.
- [17] G.R. No. 54039, November 28, 1980, 101 SCRA 437.
- [18] G.R. No. 52830, November 28, 1980, 101 SCRA 420.
- [19] G.R. No. 53747, February 20, 1981, 102 SCRA 857.
- [20] Cf. People v. Vera, 65 Phil. 56, 82 (1937).

CONCURRING OPINION

BARREDO, J.:

I concur in the opinion of our learned Chief Justice that quo warranto does not lie in the premises of this case and, therefore, also in the judgment dismissing the petition herein. I base this concurrence on simple ground that per existing jurisprudence adhered to fundamentally by this Court, the said petition is prima facie baseless. It cannot be considered as the quo warranto reserved to petitioner in Our decision in *Faderanga vs. Comelec*, G.R. No. 55938, of June 26, 1981, because (a) the quo warranto contemplated therein is that supposed to be filed with the Court of First Instance under the Election Code in lieu of an election protest, at the option of the petitioner, and (b) even in the remote possibility that such quo warranto could be filed with this Court, petitioner did not file the same within the period fixed by Us, that is 15 days from receipt of Our decision on June 26, 1981. This petition was filed on July 13, 1981 or 3 days too late. Why petitioner did not opportunely seek relief from the Court of First Instance is not explained, and I cannot discern any plausible reason for such attitude.

Apparently, the primordial point that has goaded petitioner in coming directly to Us could be his conviction that the violation of the Constitution alleged by him has been held by this very Court as involving an inviolable political policy against partisan opportunism that must be eradicated by all means, and, therefore, independently of the quo warranto under the Election Code, there should be another remedy available against anyone guilty of such practice, particularly in this Court, as the guardian of the Constitution. The fault in such line of thought lies in the elementary consideration that with more reason than in other judicial recourses, constitutional questions must be raised promptly and in appropriate cases only. It is only when there is manifest denial of due process that the courts are always open for constitutional redress. I am certain that with the instant experience, next time, counsel will know better what to do.

Aside from calling the attention of counsel for petitioners to the foregoing fundamentals, I see no imperative necessity to call him to account for this singular, as far as the record shows, faux pas on his part in handling election cases. He and his client must be suffering enough from their political and judicial defeat, in this case, and I don't feel I should still rub salt over their wounds.

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