

JOSE FAJURA, PETITIONER, VS. HON. CASTRENSE C. VELOSO, AS JUDGE OF THE COURT OF FIRST INSTANCE OF ILOILO, AND EDMUNDO FLORES, RESPONDENTS.

G.R. No. L-30834. May 29, 1971

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Appeal by certiorari from an order of the Court of First Instance of Iloilo affirming an order of the municipal court of Miagao dismissing the protest filed by petitioner contesting the results of the barrio elections held on January 14, 1968.

Petitioner Jose Fajura and respondent Edmundo Flores were candidates for the position of barrio captain of barrio Indag-an, Miagao, Iloilo province, at the barrio elections held on January 14, 1968. Respondent Flores was declared by the election tellers the elected barrio captain with 103 votes, while petitioner received 56 votes.

Petitioner, not satisfied with the results, timely filed on January 27, 1968 his verified petition against respondent Flores in the municipal court of Miagao, alleging that the site of the elections had been illegally transferred from the barrio hall to the school building of barrio Tan-agan, an adjacent barrio, at the instance of the municipal mayor; that his sympathizers were prevented from voting because of the presence at the polling place of the mayor and his two policemen; and that fraud attended the elections with the active participation of the mayor who ordered the tearing up of the voters' list prepared by the election tellers to keep track of the actual voters and the ballot numbers issued to them; and praying that the said elections, specifically the election and proclamation of respondent as barrio captain, be declared null and void.

The municipal court, upon motion to dismiss of respondent and after preliminary hearing and reception of evidence, ordered on February 12, 1969 the dismissal of the petition. Petitioner had not personally filed his certificate of candidacy for barrio captain, which was filed on his behalf by five registered voters, as permitted under section 8 of the Revised Barrio Charter, Republic Act No. 3590.[1] One of his five endorsers, Lucila Montalban, had apparently executed and filed with the barrio secretary a sworn statement on January 12, 1968 two days before the elections a withdrawal of her signature in the said certificate of candidacy "so that the same shall have no force and effect." This withdrawal was repudiated by the same Lucila Montalban in a later affidavit executed on August 12, 1968, stating that she had not understood the contents of the alleged withdrawal statement which she had signed at the insistence of a municipal patrolman whom she trusted, but that she had never sworn to it before the mayor, as appears on the document, and that she had no intention of withdrawing her signature from petitioner's certificate of candidacy. The municipal court, in dismissing the petition, held that "withdrawal of Lucila Montalban (Exh. 2) nullified the certificate of candidacy of the plaintiff for barrio captain. The votes, therefore, cast in his favor were stray votes. Hence, even if the votes obtained by the defendants were voided, taking for the sake of argument that they were fraudulently cast, nevertheless the plaintiff can not be legally declared elected."

Petitioner appealed to respondent court, which received the memoranda of the parties and thereafter issued its order of July 11, 1969 affirming the municipal court's dismissal order, ruling that "The withdrawal of the signature of the registered voter who endorsed the candidacy of the petitioner renders insufficient petitioner's certificate of candidacy for being short of the required five (5) voters' endorsement. Thus, in the eyes of the law, no certificate of candidacy was filed for and in behalf of the petitioner. Consequently, he was not a legal candidate for the position of barrio captain."

The legal issue at bar is simply whether the last day withdrawal of one of the five registered voters who filed petitioner's certificate of candidacy for the position of barrio captain could be deemed to have nullified his candidacy such as to divest him of the legal status of a registered candidate and right to pursue his action contesting the results of the election.

The Court holds in the negative. The certificate of candidacy filed on behalf of petitioner by the five registered voters in accordance with the provisions of the barrio charter and accepted by him as evidenced by the fact that he pursued his candidacy, was voted for and received a sizable number of votes from the voters could no longer be nullified by any unilateral withdrawal thereof without his express consent,[2] much less by a questionable and repudiated alleged withdrawal of one of the five endorsers - which appears to have come to petitioner's knowledge only after the election. In the absence of any express provision in the governing statutes, the Revised Barrio Charter and the Revised Election Code[3] on the right of voters filing a certificate of candidacy on behalf of a candidate for office to unilaterally withdraw such certificate, once the candidate has acted on it and accepted it, such right to withdraw the certificate should not be recognized, particularly to divest the candidate of his standing to contest the results of the election and in which the barrio electorate itself has a vital public interest.

This is all the more true in the case at bar where the valid act of five registered voters of the barrio in filing petitioner's certificate of candidacy would be nullified by the last hour act of one of them in withdrawing her signature of endorsement on the whimsical ground that petitioner was not interested in his candidacy, not to mention that there are strong indications from Montalban's affidavit of repudiation, supra, that her withdrawal of her signature had been obtained by trickery and bad faith.

Respondent's contention that petitioner's failure to include the six elected barrio councilors as indispensable parties, since the annulment of the election sought by petitioner would affect their positions, justifies the dismissal order, is manifestly untenable. It is quite clear from the pleadings that the annulment sought by petitioner is solely the election and proclamation of respondent Flores to the disputed position of barrio captain.

ACCORDINGLY, the order of respondent court dated July 11, 1969 is set aside and the case is ordered immediately remanded to the municipal court of Miagao, Iloilo, for further proceedings and trial on the merits. This decision shall be immediately executory upon promulgation hereof. With costs against private respondent.

SO ORDERED.

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

Ruiz Castro, J., took no part.

[1] The pertinent provision reads "(C)andidates shall file their certificates of candidacy with the barrio secretary, not later than the first Sunday of January of the election year. Any five registered voters may also file the certificates of candidacy of any qualified person." (RA 3590, sec. 8)

[2] Vide *Monroy vs. CA*, 20 SCRA 621 (1967); *Monsale vs. Nico*, 83 Phil. 758 (1949); *Cecilio vs. Belmonte*, 51 Phil. 540 (1928); *Guzman vs. Bd. of Canvassers*, 48 Phil. 211 (1925).

[3] Contrary to petitioner's submittal that the Revised Barrio Charter exclusively governs election contests of barrio elections, citing *Bautista vs. de la Cruz*, 9 SCRA 725 (1963), the Court has ruled in *Falcotelo vs. Gali*, 22 SCRA 17 (1968), expressly modifying *Bautista*, that the Revised Election Code governs all elections of public officers and that "the procedure to be followed and the periods within which the corresponding actions should be filed" in barrio election contests are governed by the Revised Election Code.

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