

CESAR R. BORROMELO, PETITIONER-APPELLANT, VS. COMMISSION ON ELECTIONS, QUEZON CITY BOARD OF CANVASSERS, ET AL., RESPONDENTS-APPELLEES.

G.R. No. L-29369. July 24, 1969

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

This being an appeal from an order of the Court of First Instance of Rizal granting respondents' motion to dismiss the petition herein, the only question for our determination is one of law. As stated in the order appealed from:

"The herein petitioner filed this petition for the annulment of elections in Quezon City held on November 14, 1967 on the ground that the said elections was characterized by the commission of serious frauds, irregularities and flagrant violation of the election law; that one hundred forty eight (148) precincts with the respective numbers enumerated in the said petition carries a report that in said precincts there were no voting booths as appearing in the Official Comelec Form No. 31; and that in several precincts although there exist voting booths yet they were not more than one-half (1/2) of the legal requirements of one booth for every twenty registered voters registered in the precinct, and other similar violations; and consequently, prayed that the writ of preliminary injunction be issued to temporarily enjoin, stop or restrain or prohibit the Board of Canvassers of Quezon City or Commission on Elections to proclaim the winning candidates, which prayer is now moot and academic. The second prayer is that after due hearing a declaration be made that the elections held in Quezon City on November 14, was not free, honest and untrammelled, as a result thereof there was a failure of elections, and consequently the result of said elections be declared null and, void, and other reliefs as may be in consonance with the constitutional mandate of free, honest and orderly elections.

"The respondents, namely, the Commission on Elections, the Quezon City Board of Canvassers and the duly proclaimed and elected officials from the mayor down to the Councilors, filed a motion to dismiss said petition on the ground that the petition fails to state a cause of action; that the petition is barred by a prior judgment; and that there is another action pending before this court involving the same parties and raising the same issues. Respondent Jesus P. Perlas, Jr., filed his answer with special and affirmative defenses. Said motion to dismiss was opposed in writing by the petitioner's lawyer Antonio C. Amor who argued his side of the case while Atty. Alejandro F. de Santos appeared and argued for the respondents."

Relying mainly upon our decision in *Abes vs. Commission on Elections*,^[1] the Court of First Instance of Rizal granted said motion to dismiss, and the Court having subsequently refused to reconsider its order to this effect, petitioner Cesar R. Borromeo interposed the present appeal.

Citing *Nacionalista Party vs. Commission on Elections*^[2] and *City Board of Canvassers vs. Moscoso*,^[3] we dismissed the petition in the *Abes* case for the annulment of the very same election for local officers of Quezon City involved in the case at bar, despite the fact that the irregularities alleged by *Abes* and his co-petitioners in said former case are more serious and numerous than those averred in the petition herein. The parity between the *Abes* case and the one at bar is assailed upon the ground that *Abes* had sought the annulment of said election by the Commission on Elections, which, we held, has no such power, whereas, in the present case, petitioner applied for

said relief from the Court of First Instance of Rizal. It should be noted, however, that, apart from the question whether the Commission on Elections had the power to grant the relief prayed for in the Abes case, one of the issues raised therein was whether or not a given election could be annulled in an action brought exclusively for such purpose, without any election protest therefor. We then decided such issue in the negative, not only invoking with approval our ruling in *Nacionalista Party vs. Commission on Elections*[4] to the effect that "the power to decide election contests necessarily includes the power to determine the validity or nullity of the votes questioned by either of the contestants," but, also, pointing out:

"Not that petitioner are bereft of remedy. The course to pursue is pointed out to them in *City Board of Canvassers vs. Moscoso*, heretofore cited, x x x -

"The question of whether or not there had been terrorism, vote-buying and other irregularities in the 1959 elections in Tacloban City should be ventilated in a regular election protest, pursuant to section 174 of the Election Code, and not in a petition to enjoin the city board of canvassers from canvassing the election returns and proclaiming the winning candidates for municipal offices. The duty of the board in this regard is more or less ministerial; it does not pass upon the validity or invalidity of the ballots cast, and its action is necessarily without prejudice to the determination of such question in a proper court proceeding later. This proceeding under section 174 should be filed within two weeks after the proclamation of the result of the election and hence necessarily implies a previous canvass of the votes by the board of canvassers. xxx"[5]

In other words, existing laws do not permit a direct action to annul an election, like the one at bar. Said remedy may be granted only as an incident to an election contest. Hence, the petition in this case does not allege a cause of action for the relief sought therein.

Indeed, petitioner concedes that one of the tests to determine whether or not a cause of action exists is whether the petition shows "that the petitioner has suffered an injury?" Petitioner alleges, however, no such injury. In the petition herein, it is merely alleged:

"That the Petitioner as a citizen deeply interested in honest, free and equal elections has been violated, and to dispel all doubts as to the validity of the elections held in Quezon City on November 14, 1967, is entitled to the immediate hearing of the above-entitled Petition for the sake of honest, free and equal elections."[6]

The interest thus alleged in the petition is that which petitioner shares in common with the community in general. Such interest is manifestly inadequate to entitle him to seek the relief prayed for, assuming that he has resorted to the proper procedure, which he has not. Any other view would justify the institution of proceedings for the annulment of an election by any member of our population or citizenry, and, hence, by any member of the losing political party. It is obvious that this is not sanctioned by our laws.

WHEREFORE, the order appealed from should be, as it is hereby affirmed, with costs against petitioner herein.

SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

[1] G. R. No. L-28348, Dec. 15, 1967.

[2] 85 Phil. 149, 155.

[3] G. R. No. L-16365, Sept. 30, 1963.

[4] Supra.

[5] Supra. Underscoring ours.

[6] Underscoring ours.

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