

**MANUEL I. SANTOS, PETITIONER, VS. COMMISSION ON ELECTIONS,
RICARDO NAVAL AND JUANITO P. FRANCISCO, RESPONDENTS.***G.R. No. L-52390. March 31, 1981*

Ponente: DE CASTRO, J.

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Invoked in this petition is the power of the Supreme Court to review, by certiorari, any decision, order or ruling of the Commission on Elections[1] which, in the case of *Aratuc vs. COMELEC*, 88 SCRA 251, was clearly defined to be confined to questions of law, particularly violations of the Constitution and/or constitutional rights. The right to due process is what has been noted to have been allegedly violated, more than any other constitutional right, in petitions like the present which have assailed resolutions of the COMELEC holding certain candidates disqualified from running for an elective office on ground of what is popularly known as "political turncoatism."

Where allegations of denial of procedural due process have been found to be clearly well-founded, factual or legal, We have taken the only course legally proper in the premises. We have set aside the COMELEC resolution complained against, and remanded the case to the COMELEC for the observation of the cardinal requirement of procedural due process.[2] Where municipal elective positions are involved, and the winning candidates have been proclaimed, We ordered the filing of election contests or quo warranto proceedings as may be pro-per.[3]

In the instant case, We perceive no sign of complaint of denial of due process insofar as the sufficiency of noticed and hearing is concerned. It appears that all the evidence as was desired to be presented by petitioner who had duly filed his Answer, have been duly admitted for evaluation by the COMELEC. The only question presented for determination, and which We cannot avoid, is whether the COMELEC resolution under review is supported by substantial evidence, which may also be said to go into the broad concept of due process. We have examined the evidence on record, and We are satisfied that the COMELEC correctly adjudged its sufficiency to support its conclusion that petitioner was disqualified from running as NP candidate for the position of Mayor of Taytay, Rizal, by reason of violation of the constitutional provision expressly prohibiting "turncoatism", [4] as well as PD 1661 against "guest candidates."

The COMELEC in its Resolution dated January 19, 1980, the challenged resolution, on a petition seeking petitioner's disqualification filed on January 14, 1980 by above-named private respondents, as NP candidate for Mayor of Taytay, Rizal, found that "x x x Santos changed his political party affiliation from the KBL as shown by the aforesaid letter-resignation dated January 2, 1980 (Exh. A), wherein he was 'tendering my resignation as MEMBER, Mun. Com. (Position) Kilusang Bagong Lipunan, Taytay, Rizal,' to the NP, his present affiliation with the NP having been expressly admitted by him (see also Exh. B); that the NP, thru its Acting President Jose J. Roy, initially revoked/withdrew the 'NP nomination in favor of Mr. Manuel Santos and other candidates x x x because they were members of good standing of the KBL as of January 2, 1980 x x x' and in view also of 'the provisions of the Constitution against turncoatism' and the provisions 'of recent Presidential Decree against Guest Candidates' (Exh. G); and that the NP revoked respondent Santos' designation as Municipal Chairman of the NP in the Municipality of Taytay (Exhs. 3 & 4), although later said respondent Santos was chosen as the NP official

candidate for Mayor of said muni-cipality (Exh. 5), thereby violating Section 10, Article XII (C) of the Constitution and Presidential Decree No. 1661, as amended."[5]

The facts in this case as above recited find strong resem-blance, if not almost exact similarity, with those in the case of Evasco vs. COMELEC,[6] a petition like the present, which We dismissed, there being substantial evidence to support the challenged COMELEC resolution disqualifying candidate Evasco as candidate of the NP for the position of Mayor of Liliw, Laguna for "political turncoatism". In said case, this Court noted that candidate Evasco attended as a member of the 7-man municipal committee the reorganizational meeting of the leaders and members of the KBL held in the evening of November 24, 1979, and thereafter said committee organized itself on November 26, 1979 with Evasco also attending the same (Exh. C & C-1); that admittedly said Evasco submitted a letter of irrevocable resignation dated December 28, 1979 as a member of the Kilusang Bagong Lipunan (KBL) Chapter of the Municipality (Exh. B), thereby clearly showing by the aforesaid overt acts that candi-date Evasco was formerly affiliated with the KBL on November 24, 1979 or earlier, but has later affiliated with the NP as shown in his certificate of candidacy for municipal mayor of Liliw, Laguna, subscribed and sworn to on December 31, 1979, (Exh. A), or within six (6) months immediately preceding the election scheduled on January 30, 1980.

Petitioner Santos, however, comes up with the contention that he has always been an NP and has never ceased to be such, even when he joined the KBL and became a member of the KBL, Municipal Committee of Taytay, Rizal. He alleges with stress that KBL is not a political party when he joined it, but a mere umbrella organization, a mere movement to hasten the achievement of the goals, and firmly establish the gains of the New Society, and so he cannot be said to have changed political party.[7]

This argument does not appear to have been unequivocally put forth in petitioner's Answer to the petition for his dis-qualification (Annex C to Petition), which explains the lack of any ruling on this issue as raised by such argument, by the COMELEC in its assailed resolution. In any case, the contention was evidently rejected by the COMELEC; otherwise, it would have denied the petition for petitioner's disqualification on ground of changing political party. After Our ruling in Evasco and Gabatan, and finding striking similarity in the evidence upon which We based Our finding of the existence of compliance with the substantial evidence requirement for which We upheld the challenged resolutions of the COMELEC in those cases, particularly the act of "resigning" from the KBL, in whose municipal committees they were active members, an act obviously unnecessary unless petitioners feel that in joining the KBL they had taken to a distinct political aggrupation from the NP which remained as a distinct, independent and active political party in the elections of 1978, for which COMELEC accredited NP separately from the KBL, the conclusion seems inevitable that KBL had always been a political party. Conse-quently, one who actively identified himself with the KBL, without any reservation that he keeps intact his full status as an NP member, had joined the KBL as a distinct aggrupation and ceased thereafter to be an NP. Double affiliation is intolerable under a party system which is the very essence of the parliamentary form of government We have adopted and have just started firmly to establish.

The COMELEC's determination of whether the KBL was a political party from the inception of its existence, distinct and separate from the NP is undoubtedly an exercise of its constitutional power of administering the laws relative to the conduct of elections. This power is exclusive. Unless its exercise is tainted with error correctible by certiorari which usually takes the form of lack or excess of jurisdiction, or grave abuse of discretion, We should not disturb the orders, resolutions or other acts of the COMELEC.[8] As was said in the early case of Morrero vs. Bocar, et al., 66 Phil. 429, the decision of the COMELEC is beyond judicial interference except upon a clear showing of such arbitrary and improvident use of its power as will constitute denial of due process of law.

Under its Resolution No. 1406, promulgated December 22, 1979, laying down rules on the accreditation of

political parties, Section 1 thereof provides that any duly registered political party in the April 7, 1978 election shall be entitled to accreditation. Pursuant to this Resolution, KBL was duly accredited, separately from the NP. That KBL had always been a political party or aggrupation can, therefore, no longer be open to question. Were KBL not such a political party, block voting as was declared valid in the case of *Peralta vs. COMELEC*[9] could not have been availed of by it, as it un-questionably did, in the 1978 elections. For block voting is voting for a political party.

In the light of the ruling in the cases of *Evasco* and *Gabatan*, COMELEC can by no means then be held to have gravely abused its discretion to justify Our setting aside its assailed Resolution in the instant petition. Active involvement in KBL political affairs as a party, such as being a member of the Municipal Committee thereof was the primary and decisive consi-deration upon which "turncoatism" was found to have been com-mitted in the aforesaid cases. We cannot avoid coming upon the same conclusion here with how petitioner had similarly manifested his adherence to the KBL as a political party which earned for him from no less than ranking officials of the NP to which he claims unbroken affiliation their regard of him as "a KBL of good standing", for which initially, they cancelled his candidacy in the NP slate obviously in fear of his being actually a "turncoat", from KBL to NP, that COMELEC correctly found him to be.

The constitutional provision against "political turncoatism" already in force upon the effectivity of the New Constitution more than seven (7) years ago, is clearly intended to apply to all elections held under its regime, regardless of whether the holding of said elections is declared less than the 6-month period mentioned in the provision. The stance taken by petitioner that it should not apply in the last election the holding of which was announced only a month before, is clearly not tenable, even only under the well-known legal maxim that where the law does not distinguish, We should not distinguish. No right constitutionally protected under the due process is involved for petitioner to complain against lack of sufficient notice because of the less than six (6) months intervening between the declaration of the holding of an election and the day of the election. The Constitution speaks so un-equivocally with its innovative and mandatory provision, obedience thereof must be imposed.

It follows that the applicability of PD No. 1661, being merely an implementation, or in furtherance, of the well-studied and wise constitutional provision is neither open to doubt. The prohibition against ex post facto law which petitioner invokes in his mistaken belief that the decree, if applied to him, is being given retrospective effect, which it is not, does not apply, as We have already so held in effect in the earlier cases of *Evasco* and *Gabatan*. The decree could by no stretch of the clear scope of the novel constitutional concept, be banned under the ex post facto law clause of the Constitution, for it merely provides, for a certain disqualification of a candidate aspiring to be chosen to an elective office which, being a mere privilege, is a fit subject for reasonable statutory regulation, clearly not penal in character. As defined, ex post facto law is limited in its scope only to matters criminal in nature.[10]

We must, therefore, declare that the Resolution of the COMELEC of January 19, 1980, disqualifying petitioner and cancelling his certificate of candidacy suffers from no reversible error or infirmity. It must be enforced as if no restraining order had been issued, for in issuing the restraining order, this Court's sole purpose was to give petitioner a chance to be voted for, since the question of his disqualification could not be resolved before the elections by reason of time constraint, so that should he win and be ultimately declared by this Court not disqualified, the people's will shall have been known and should be given effect, as is the paramount object of holding elections, the instrument most valued in the exercise of sovereignty by the people to whom such sovereignty belongs.

WHEREFORE, the petition is dismissed and the resolution of January 19, 1980 of the COMELEC should be allowed to stand with all its legal effects. No costs.

SO ORDERED.

Barredo, Makasiar, Concepcion, Jr., Guerrero, and Melencio-Herrera, JJ., concur.

Teehankee, J., dissents in a separate opinion.

Aquino, J., in the result.

Fernando, C.J., no part.

Abad Santos, J., on official leave.

[1] Section 11 of Article XII (C) of the New Constitution provides: "Any decision, order, or ruling of the Commission may be brought to the Supreme Court on certiorari by aggrieved party within thirty (30) days from receipt of a copy thereof."

[2] Aquilino Q. Pimentel, Jr., et al. vs. Commission on Elections, et al., G. R. No. 52428, February 21, 1980.

[3] Renato N. Reyes vs. Commission on Elections, et al., G. R. No. 52699, May 15, 1980; Cesar E. Nepomuceno, Leon C. Arcillas and Ruben C. Avenido vs. COMELEC and Oscar E. Laserna, G. R. Nos. 52427 and 52506, May 15, 1980.

[4] Section 10, Article XII (C) of the New Constitution provides: "No elective public officer may change his political party affiliation during his term of office, and no candidate for any elective public office may change his political party affiliation within six (6) months immediately preceding or following an election"; and Section 1 of the Presidential Decree No. 1661, as amended provides: "It shall be unlawful for any registered or accredited political party to nominate and/or support as its official candidate any person belonging to another accredited or registered party unless he has affiliated with the nominating party at least six (6) months before the election: Provided, that a person who participated as an officer in the campaign of a political party, group or aggregation in the immediately preceding elections shall be deemed a member of such party as of the date of the political campaign, for purposes of nomination as official candidate of such party in succeeding elections."

[5] Comelec Resolution dated January 19, 1980, Annex A to Petition, p. 18, Rollo.

[6] G.R. No. 52401, Resolution of January 28, 1980; See also G. R. No. L-32381, Gabatan vs. COMELEC, Resolution of January 26, 1980.

[7] pp. 5-8, Petition, pp. 7-10; Rollo.

[8] Bashier vs. COMELEC, 43 SCRA 238; Puñgutan vs. Abubakar, et al., 43 SCRA 1, 10-11; Lucman vs. Dimaporo, 33 SCRA 387-388.

[9] 82 SCRA 30, G. R. No. L-47771, March 11, 1978.

[10] E.G., Mekin vs. Wolfe, 2 Phil. 74, 78 (1903); U.S. vs. Jueves, 23 Phil. 100, 105 (1912); Roman Cath. Bishop of Lipa vs. Municipal of Taal, 38 Phil. 367 (1918); Province of Camarines Sur vs. Director of Lands, 64 Phil. 600 (1937); Ongsiako vs. Gamboa, 86 Phil. 50, 54 (1950); Tolentino vs. Angeles, 99 Phil. 309, 318 (1956); Phil. National Bank vs. Ruperto, L-13777, June 30, 1960; Santos vs. Secretary of Public Works & Communications, L-16049, March 18, 1967.

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DISSENTING OPINION

TEEHANKEE, J.:

I dissent from the majority decision dismissing the petition of petitioner Manuel I. Santos who was duly elected and proclaimed as mayor of the municipality of Taytay, Rizal at the local election of January 30, 1980 with an overwhelming plurality of 4,326 votes against his KBL opponent Ricardo J. Rufino (with a total of 15,463 votes against his opponent's 11,137 votes) and has duly assumed the said office to which he was elected since then to the present, and upholding the questioned Comelec resolution which would disqualify him on grounds of alleged turncoatism.

The Comelec's disqualification of the petitioner as an alleged turncoat from the KBL for having returned to the Nacionalista Party to which he had always belonged cannot stand factual nor legal scrutiny. His letter of resignation of January 2, 1980 from the KBL which is reproduced in full in the footnote hereof[1] shows that petitioner resigned from the KBL precisely because it had been converted into a political party separate and distinct from the Nacionalista Party to which petitioner had always belonged and therefore he was disassociating himself from the KBL "prompted by my desire to remain a loyal Nacionalista Party member." Petitioner's action of resigning from the KBL is sanctioned by no less than this Court's own solemn pronouncements in the *Laban vs. Comelec* case[2] prior to the April 7, 1978 elections that the KBL was but an umbrella organization and that the Nacionalista as well as those belonging to other parties would be free in the future "to join the party of their choice assuming that the KBL will eventually evolve into a new political party." To quote from Mr. Justice Barredo, the ponente in the said case, "In other words, by nominating as its own the candidates of the KBL, the Nacionalista Party merely gave the mass of its loyal and die-hard party-men the opportunity to vote distinctly as Nacionalistas in the coming election, leaving it for the future, when political matters shall have had more time and opportunity to fully develop and firm themselves up in relation to the modes and objectives of the New Society, for each of them to join the party of their choice, assuming the KBL will eventually evolve into a new political party. Until that time comes, it would be ignoring significant historical realities and practically placing political thought in a straight jacket to recognize the KBL as the exclusive vehicle for the articulation of political ideals."

Due process and a sense of fair play demand that before the verdict of the electorate as well as the President's order as published in the February 27, 1980 newspapers directing the withdrawal of all disqualification charges against the opposition candidates who won in the elections, reserving the right of the defeated KBL candidate to file an election protest, are thus swept aside and disregarded, that a full dress hearing which may only be given in an appropriate quo warranto proceeding or election protest should first be had in order to take into account all the vital facts and considerations.

The grounds of my dissent which are fully applicable *mutatis mutandis* to this case are extensively set forth in my dissenting opinion in the *Ticzon* disqualification cases[3] involving the mayoralty of San Pablo City which I hereby reproduce by reference and incorporate as part hereof, together with the separate opinion in the said cases of Mr. Justice Vicente Abad Santos, which I have hereto appended marked as Annexes "A" and "B" hereof, respectively.

The majority decision at bar runs counter and cannot be justified in the light of the liberal principles on the issue of turncoatism enunciated by a unanimous Court in the recent case of *Romeo S. Gonzales vs. Comelec*. [4] Much less can it be reconciled with the decision in *Mitmug vs. Comelec* (G. R. No. 54082) issued just this month (on

March 24, 1981), wherein the Chief Justice for a unanimous Court again reiterated that such issues are better resolved in an election protest "conclusively once and for all, instead of the parties being caught in the procedural meshes of a pre-proclamation controversy," holding that

"x x x With the canvassing completed, and the proclamation made, private respondent emerging as the victor with right reserved to petitioner to file his cor-responding election protest, this case has become moot and academic.

"Moreover, this mode of disposing the case is in accordance with the invariable principle followed by this Court given its formulation as to disqualification controversies in *Aguinaldo v. Commission on Elections* (G. R. No. 53953, January 5, 1981), but likewise applicable to petitions raising questions more appropriately decided in an election protest, the better view as to the proceedings filed with us after January 30, 1980 is to dismiss such petitions without prejudice to having the issues forced upon in the appropriate contests before the proper agency. The time that had elapsed since the election emphasizes the validity and wisdom of such an approach. It is even more appropriate here. An election protest should settle the matter conclusively once and for all, instead of the parties being caught in the procedural meshes of a pre-proclamation controversy."

I vote accordingly to grant the petition and to set aside the questioned Comelec resolution.

[1] "January 2, 1980

Ex-Vice Mayor Juan M. Francisco

Chairman, Municipal Committee

Kilusang Bagong Lipunan (KBL)

Taytay, Rizal

Dear Sir:

In view of the accreditation by the Commission on Elections of the Kilusang Bagong Lipunan (KBL) as a political party separate and distinct from the Nacionalista Party (NP), I am hereby tendering my resignation as MEMBER, MUN. COM. Kilusang Bagong Lipunan Taytay, Rizal.

My disassociation from the KBL was prompted by my desire to remain a loyal Nacionalista Party member, which is also accredited as a separate and distinct political party.

(Sgd.) MANUEL I. SANTOS"

[2] 82 SCRA. 196, March 25, 1978.

[3] G.R. No. 52451 (*Zacarias A. Ticzon vs. Comelec*); G. R. No. 52678 (*Zacarias A. Ticzon vs. Comelec, et al.*); and G.R. No. 53393 (*Ramon Armedilla vs. Comelec, et al.*); [the decision of which is scheduled for release together with this case for the current month of March].

[4] G.R. No. 52789, Dec. 19, 1980.

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