

GERONIMO B. ZALDIVAR, PETITIONER, VS. HON. NUMERIANO ESTENZO, JUDGE OF THE COURT OF FIRST INSTANCE OF ORMOC CITY, AND SOTERO PEPITO, RESPONDENTS.*G.R. No. L-26065. May 03, 1968*

Ponente: FERNANDO, J.

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The specific question that confronts this Court in this petition for certiorari with preliminary injunction, one that is novel and unique, is the competence of a court of first instance to pass upon and entertain a special civil action to prohibit municipal mayors, presumed to be partial to the candidacy of a congressional candidate, from appointing special policemen, and agents with the sole purpose, so it is alleged, to terrorize voters and thus frustrate the basic objective of the Election Code, which is to assure the free and honest expression of popular will. Respondent Judge, by no means free from suspicion of sympathy for the other candidate, had no doubt about his power to act in the premises. With unusual celerity and dispatch, he granted ex-parte the preliminary injunction sought. This Court is of a different mind.

Such an assumption of jurisdiction, considering that the Commission on Elections is by the Constitution vested with "exclusive charge of the enforcement and administration of all laws relative to the conduct of elections * * *,"[1] is as war with the plain constitutional command the implementing statutory provisions, and the hospitable scope afford such grant of authority so clear and unmistakable in recent decisions. Moreover, if respondent Judge were of a similar persuasion, the tradition of impartiality so necessary and vital to maintain unimpaired respect for the judiciary would have been upheld and the doubts, whether well-founded or not, as to a court lending its prestige and its authority to favor a congressional aspirant would not have arisen.

In the language of the petition, dated May 9, 1966, petitioner being Geronimo Zaldivar and the principal respondent, Judge Numeriano Estenzo, of the Court of First Instance of Ormoc City, it was filed "for the purpose of setting aside (a) the decision dated April 28, 1966, rendered by the Honorable Judge Numeriano Estenzo of the Court of First Instance of Leyte, 13th Judicial District, Fifth Branch, Ormoc City, in Special Civil Case No. 753-O, entitled 'Luis Porcare and Sotero Pepito, petitioners, versus Feliciano Larrazabal, in his official capacity as Mayor of Kananga, Leyte, and Geronimo Zaldivar, in his official capacity as Mayor of Albueria, Leyte, respondents;' (b) the order for the arrest of petitioner issued in said case on the same date that the decision was promulgated; (c) the warrant of arrest issued pursuant to said order; (d) the order issued in said case dated November 5, 1965, granting the issuance of a writ of preliminary injunction; and (e) the writ of preliminary injunction so issued on the same date, on the ground that said decision, orders, warrant of arrest and writ of preliminary injunction were issued by the trial court without jurisdiction." [2]

Petitioner was then the incumbent municipal mayor of Albueria, Leyte, named respondent in the special civil case referred to, while the other respondent, Sotero Pepito, was one of the petitioners in such case. The writ of preliminary injunction prayed for was granted by this Court in a resolution of May 20, 1966, which gave due

course to the petition.

While the answer of respondent Judge Estenzo, dated June 15, 1966, contained his own version of the facts, there is no question that a decision in favor of the petitioner, now respondent, Pepito, and against the respondent, now petitioner Zaldivar, in the above special civil action was rendered on April 28, 1966;[3] an ex-parte order for the issuance of a preliminary injunction and the writ itself were issued on the same day the special civil action was filed;[4] and the arrest of petitioner immediately followed by a warrant of arrest were ordered by respondent Judge.[5]

The decision assailed, as well as the challenged orders and actuaciones of respondent Judge, was the direct consequence of his assumption of jurisdiction over the special civil action of prohibition with preliminary injunction, filed in his court by now respondent Sotero Pepito, one of the petitioners in that case, along with a certain Luis Porcare. As already indicated, had there been more hesitancy and doubt as to his competence resulting in more circumspection and less eagerness to act on the matter, respondent Judge might have reached a contrary conclusion as to the correctness of his assumption of jurisdiction. The wording of the petition for prohibition with preliminary injunction, considering the applicable law, ought to have warned and cautioned respondent Judge against a determination that he could validly act on the premises.

A recital of the contents of the petition will explain why. The petitioners, both of whom were municipal councilors and, according to their petition, "local leaders and supporters of the candidacy for reelection of Congressman Dominador M. Tan, * * *," alleged that now petitioner Zaldivar, therein named as respondent, with a municipal mayor of another municipality, a certain Feliciano Larrazabal, "acting in their official capacities as Municipal Mayors, are known to be sympathetic to the candidacy of Rodolfo Rivilla, and with grave abuse of discretion have caused to appoint special policemen and agents to be paid from public funds and to be provided with uniforms and firearms for the sole purpose of utilizing said special policemen and agents to terrorize and arrest electors sympathetic to Congressman Dominador M. Tan during the elections of November 9, 1965, in the aforesaid municipalities within the 4th District of Leyte; * * *." [6] It was the contention of petitioners that respondents, as municipal mayors, acted "without and in excess of their powers as executives of their respective jurisdictions, as no authority or sanction has been obtained from the Executive Secretary and the Commission on Elections, and the exercise of such powers would be detrimental to the interest of the electorate which they are bound to protect." [7] From which it was their conclusion that such "consummation of the intended acts of respondents in their respective jurisdiction would frustrate the will of the people to vote freely for the men of their choice during the elections of November 9, 1965. * * *." [8] As noted earlier, respondent Judge, based on such a petition, decided that he had jurisdiction and saw to it that an order for the issuance ex-parte of the preliminary injunction was handed down to be followed by the writ itself on November 5, 1965, the very same day the action was filed.

It thus admits of no doubt that the grievances, if any, of respondent Pepito, as one of the petitioners in that special civil action before respondent Judge, arose from an alleged abuse of authority on the part of now petitioner, respondent therein, Zaldivar, as municipal mayor, in appointing "special policemen and agents" so that they could be utilized solely for the purpose of terrorizing and arresting voters sympathetic to one of the congressional candidates and thus frustrating "the will of the people to vote freely for the men of their choice" in the election to be held on November 9, 1965. Nothing could be clearer than that such an alleged abuse of power was inextricably linked with the poll to be held four days later. As noted in the petition, if successful, such a scheme would be a denial of the right of the electorate to give free expression to their convictions. It is indisputable, therefore, that on its face, the petitioner sought the avoidance of acts that would be violative of the Election Code, which is designed primarily to assure that the right to vote on the part of each and every elector be respected and

safeguarded to the fullest extent.

Under the Constitution, the Commission on Elections has “exclusive charge of the enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law.”[9] In the implementation of the above constitutional prerogative, the Commission on Elections is vested under the Election Code with “direct and immediate supervision over the provincial, municipal, and city officials designated by law to perform duties relative to the conduct of elections.”[10] It could even suspend “from the performance of said duties any of said officials who shall fail to comply with its instructions, orders, decisions, or rulings and appoint their temporary substitutes and, upon recommendation of the Commission, the President of the Philippines may remove any or all such officials who shall be found guilty of non-feasance, malfeasance, or misfeasance in connection with the performance of their duties relative to the conduct of elections.”[11]

In the special civil action for prohibition before respondent Judge, its essentially political character is manifest, the main allegation being the alleged utilization of the power of petitioner Zaldivar, municipal mayor named respondent therein, to avail himself of the authority of his office to appoint special policemen or agents to terrorize voters so that they would support the congressional candidate of his choice. Both under the Constitution and the Revised Election Code, it is not so much the power, but the duty of the Commission on Elections to exercise supervision over municipal officials precisely to enforce the Election Code. No other agency is better suited to preclude abuse of authority on the part of local officials, the sanction being that it could recommend to the President their removal if found guilty of “non-feasance, malfeasance or misfeasance in connection with the performance of their duties relative to the conduct of elections.”[12]

Moreover, this Court, from the creation of the Commission on Elections, has accorded full amplitude to the wide discretion vested in the Commission on Elections in the performance of its constitutional functions. As early as 1941, in *Sumulong v. Commission on Elections*,[13] full recognition and awareness of the crucial role to be played by the Commission in the conduct of elections was evident, the language employed in the opinion of the then Justice Abad Santos being quite explicit. Thus: “The Commission on Elections is a constitutional body. It is intended to play a distinct and important part in our scheme of government. In the discharge of its functions, it should not be hampered with restrictions that would be fully warranted in the case of a less responsible organization. The Commission may err, so may this court also. It should be allowed considerable latitude in devising means and methods that will insure the accomplishment of the great objective for which it was created free, orderly and honest elections. We may not agree fully with its choice of means, but unless these are clearly illegal or constitute gross abuse of discretion this court should not interfere. Politics is a practical matter, and political questions must be dealt with realistically not from the standpoint of pure theory. The Commission on Elections, because of its fact-finding facilities, its contacts with political strata-gists, and its knowledge derived from actual experience in dealing with political controversies, is in a peculiarly advantageous position to decide political questions.”

So it has continued up to the present. To speak of more recent cases, there was stress laid in *Lucas v. Canton*[14] on its “constitutional duty of administering and enforcing the laws relative to the conduct of elections with a view to promoting clean and honest elections the very purpose for which the Commission on Elections was created constitutional mandate.” As was emphatically observed by Justice Zaldivar, speaking for the Court: “It would indeed be absurd to say that the Commission on Elections has a legal duty to perform and at the same time it is denied the necessary means to perform said duty.” The same trend is evident in three decisions of this Court in December 1967, *Espino v. Zaldivar*,[15] *Demafiles v. Commission on Elections*[16] and *Estrada v. Navarro*,[17] and one in January 1968, *Ong v. Commission on Elections*. [18]

The question may be asked: Why should not the judiciary be a co-participant in this particular instance of enforcing the Election Code as its authority was invoked? The obvious answer is the literal language of the Constitution which empowers the Commission on Elections to "have exclusive charge of the enforcement and administration of all laws relative to the conduct of the elections." Moreover, as was so aptly observed by the then Justice Frankfurter, although the situation confronting the United States Supreme Court was of a different character: "Nothing is clearer than that this controversy concerns matters that bring courts into immediate and active relations with party contests. From the determination of such issues this Court has traditionally held aloof. It is hostile to a democratic system to involve the judiciary in the politics of the people. And it is not less pernicious if such judicial intervention in an essentially political contest be dressed up in the abstract phrases of the law." [19] Then too reference by analogy may be made to the principle that sustains *Albano v. Arranz*. For even without the express constitutional prescription that only this Court may review the decisions, orders and rulings of the Commission on Elections, it is easy to understand why no interference whatsoever with the performance of the Commission on Elections of its functions should be allowed unless emanating from this Court. The observation of Acting Chief Justice J.B.L. Reyes in *Albano v. Arranz*, [20] while not precisely in point, indicates the proper approach. Thus: "It is easy to realize the chaos that would ensue if the Court of First Instance of each and every province were to arrogate unto itself the power to disregard, suspend, or contradict any order of the Commission on Elections; that constitutional body would be speedily reduced to impotence."

This conclusion finds support from a consideration of weight and influence. What happened in this case could be repeated elsewhere. It is not improbable that courts of first instance would be resorted to by leaders of candidates or political factions entertaining the belief whether rightly or wrongly that local officials would employ all the power at their command to assure the victory of their candidates. Even if greater care and circumspection, than did exist in this case, would be employed by judges thus appealed to, it is not unlikely that the shadow of suspicion as to alleged partisanship would fall on their actions, whichever way the matter before them is decided. It is imperative that the faith in the impartiality of the judiciary be preserved unimpaired. Whenever, therefore, the fear may be plausibly entertained that an assumption of jurisdiction would lead to a lessening of the undiminished trust that should be reposed in the courts and the absence of authority discernible from the wording of applicable statutory provisions and the trend of judicial decisions, even if no constitutional mandate as that present in this case could be relied upon, there should be no hesitancy in declining to act.

One last point. The north expected of a judge, expressed in language both lucid and forceful by Justice Dizon, bears reiteration: "It has been said, in fact, that due process of law requires a hearing before an impartial and disinterested tribunal, and that every litigant is entitled to nothing less than the cold neutrality of an impartial judge * * *. Moreover, second only to the duty of rendering a just decision, is the duty of doing it in a manner that will not arouse any suspicion as to its fairness and the integrity of the Judge." [21] It is difficult enough to attain the ideal of a presiding judge being "wholly free, disinterested, impartial and independent," as was noted in the Gutierrez decision. It becomes doubly difficult for such qualities to be in evidence whenever the matter before him is so enmeshed and so intertwined with partisan considerations that even if he could justly lay claim to such attributes, he still would be susceptible to the suspicion, by whichever group may feel that its just claim is rejected, that he acted not in accordance with the cold dictates of reason, but with the promptings and urgings of his sympathy and predilections in whatever direction they may lie. To repeat, the conclusion reached as to the lack of jurisdiction of the courts of first instance in litigations of this character would go far in fortifying and bolstering the belief in the reality of a truly independent judiciary, free from partisanship and aloof from politics.

WHEREFORE, the writ for certiorari prayed for is granted; the decision rendered by respondent Judge on April 28, 1966, in Special Civil Case No. 753-0 in his sala, the order for the arrest of petitioner, the warrant of arrest, the order dated November 5, 1966, granting the issuance of a writ of preliminary injunction; and the writ of

preliminary injunction so issued on the same date set aside; and preliminary injunction issued by this Court dated May 26, 1966 made permanent. No special pronouncement as to costs.

Reyes, J.B.L., Dizon, Makalintal, Bengzon, Sanchez, Castro, and Angeles, JJ., concur.

[1] Art. X, Sec. 2, Constitution of the Philippines.

[2] Petition, opening paragraph.

[3] Petition, Annex L.

[4] Petition, Annexes B and C.

[5] Petition, Annexes M and N.

[6] Petition, Annex A, pars. 1-4.

[7] *Ibid*, par. 5.

[8] *Ibid*, par. 6.

[9] Art. X, Sec. 2, Constitution of the Philippines.

[10] Section 3, Revised Election Code, Republic Act No. 180.

[11] *Ibid*, Revised Election Code.

[12] *Ibid*, Revised Election Code.

[13] 73 Phil. 288, 294-295.

[14] L-25467, April 27, 1967.

[15] L-22325, December 11, 1967.

[16] L-28396, December 29, 1967.

[17] L-28340 and L-28374, December 29, 1967.

[18] L-28415, January 29, 1968.

[19] *Colegrove v. Green*, 328 US 549, 553-554 (1946).

[20] L-19260, January 31, 1962.

[21] *Gutierrez v. Hon. Santos*, L-15824, May 30, 1961. The above except was quoted with approval in *Austria v. Masaquel*, L-22536, August 31, 1967.

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