

**CRESENCIO PAREDES, AND VENANCIO UYAN, PETITIONERS, VS.
JUDGE FRANCISCO MEN ABAD OF THE COURT OF FIRST INSTANCE
OF IFUGAO, GUALBERTO LUMAIG, AND JOHN LANGBAYAN,
RESPONDENTS.**

G.R. NOs. L-36927-28. April 15, 1974

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

The respondent-Judges committed a clear error when they dismissed the election protests filed by the herein petitioners against the private respondents who had been proclaimed elected and had assumed their respective positions[1] for a four-year term[2] as a result of the November 8, 1971 elections.

The principal ground of the dismissal orders[3] now challenged before Us on certiorari, is that under Section 9, Art. XVII[4] of the Transitory Provisions of the New Constitution, the election protests filed by the petitioners have become moot and academic, for the reason that the private respondents are now holding their respective positions under a new term, indefinite as it is, the original four-year term to which they have been elected having expired upon the ratification of the New Constitution on January 17, 1973. This ruling of the respondent-Judges is clearly untenable. When Section 9, Art. XVII of the Transitory Provisions of the New Constitution, upon the ratification of said Constitution on January 17, 1973, made indefinite the four-year term of the elective provincial, city and municipal officials, said four-year term had not yet expired — it was to expire on December 31, 1975. More than this, the law under which they were elected to a four-year term provides for a hold-over.[5] We hold that, as far as these elective officials are concerned, said constitutional provision refers only to those who had been duly elected; they are the ones who should continue in office until otherwise provided by law or decreed by the incumbent President.

There is a difference between the "term" of office and the "right" to hold an office. A "term" of office is the period during which an elected officer or appointee is entitled to hold office, perform its functions and enjoy its privileges and emoluments. A "right" to hold a public office is the just and legal claim to hold and enjoy the powers and responsibilities of the office.[6] In other words, the "term" refers to the period, duration or length of time during which the occupant of an office is entitled to stay therein, whether such period be definite or indefinite. Hence, although Section 9, Art. XVII of the New Constitution made the term of the petitioners indefinite,[7] it did not foreclose any challenge by the herein petitioners, in an election protest of the "right" of the private respondents to continue holding their respective offices. What has been directly affected by said constitutional provision is the "term", not the "right" to the office, although the "right" of an incumbent to an office which he is legally holding is co-extensive with the "term" thereof.

It must be emphasized that the "right" of the private respondents to continue in office indefinitely arose not only by virtue of Section 9 of Art. XVII of the New Constitution but principally from their having been proclaimed elected to their respective positions as a result of the November 8, 1971 elections. Therefore, if in fact and in law,

they were not duly elected to their respective positions and consequently, have no right to hold the same, perform their functions, enjoy their privileges and emoluments, then certainly, they should not be allowed to enjoy the indefinite term of office given to them by said constitutional provision.

It is erroneous to conclude that under Section 9, Art. XVII of the New Constitution, the term of office of the private respondents expired, and that they are now holding their respective offices under a new term. We are of the opinion that they hold their respective offices still under the term to which they have been elected, although the same is now indefinite. In the case of *Ingles vs. Mutuc*[8], We held that although the term of office of an official or employee holding a position that is primarily confidential is indefinite, the term is deemed to have expired only when the appointing power expresses its decision to put an end to the services of the incumbent; when this event takes place, his term is then considered to have expired. Consequently, it is only when by law or by decree of the incumbent President the services of an incumbent elective official are put to an end that his present indefinite term of office will be considered to have expired.

The Constitutional Convention could not have intended, as in fact it did not intend, to shield or protect those who had been unduly elected. To hold that the right of the herein private respondents to the respective offices which they are now holding, may no longer be subject to question, would be tantamount to giving a stamp of approval to what could have been an election victory characterized by fraud, threats, intimidation, vote buying, or other forms of irregularities prohibited by the Election Code to preserve inviolate the sanctity of the ballot. Such a situation would certainly be against the goals of the New Society, which are "to reform the social, economic and political institutions in our country;" "to clean the government of its corrupt and sterile elements;" and to implement a "general program for a new and better Philippines." [9]

Section 7 of Art. XVII of the New Constitution provides that "all existing laws not inconsistent with this Constitution shall remain operative until amended, modified or repealed by the National Assembly." And there has been no amendment, modification or repeal of Section 220 of the Election Code of 1971 which gave the herein petitioners the right to file an election contest against those proclaimed elected.

According to Section 8, Art. XVII of the New Constitution, "all courts existing at the time of the ratification of this Constitution shall continue and exercise their jurisdiction until otherwise provided by law in accordance with this Constitution, and all cases pending in said courts shall be heard, tried and determined under the laws then in force." Consequently, the Courts of First Instance presided over by the respondent-Judges should continue and exercise their jurisdiction to hear, try and decide the election protests filed by the herein petitioners.

But it has been argued, with respect to the protests for Governor in G.R. No. L-36927 and G.R. No. L-38331, and for Vice-Governor in G.R. No. L-36928, that the Courts of First Instance where they are pending lost jurisdiction over the same in view of the fact that under the New Constitution, the Commission on Elections is made the sole judge of election contests of "members of the National Assembly and elective provincial and city officials." [10]

We do not share this view. We hold, as already stated earlier, that with respect to the protests filed by the herein petitioners, the Court of First Instance presided over by the respondent Judges shall continue to hear, try and decide the same by virtue of Section 8, Art. XVII of the New Constitution. It must be noted that the New Constitution was ratified on January 17, 1973, Section 2, par. 2 of Art. XII-C thereof (which made the Commission on Elections the sole judge of all election contests of elective provincial officials) could not have referred and do not refer to election protests filed as a result of the November 8, 1971 elections. Under the 1971 Election Code, election protests should be filed within fifteen days after the proclamation of the winning candidates.[11] Under ordinary circumstances, election protests arising from said elections should have been filed in or before January of 1972.[12] When the Constitutional Convention finally approved the New Constitution in

its plenary session on November 29, 1972, the present election protests and similar others were already pending in the different Courts of First Instance of the Philippines. And it may be assumed that trial had been under way in many if not all of them. The Constitutional Convention must be referring, among others, to these election protests when it decreed that all courts existing at the time of the ratification of the Constitution shall continue and exercise jurisdiction, and that all cases pending in said courts shall be heard, tried, and determined under the laws then in force.

An additional issue is involved in G.R. No. L-36927--28 pending before the respondent Judge Francisco Men Abad of the Court of First Instance of Ifugao, and that is the matter of his disqualification to continue hearing the election protests for the position of Governor and Vice-Governor filed by the petitioners Cresencio Paredes and Venancio Uyan against the private respondents Gualberto Lumauig and John Langbayan. The reasons adduced by the petitioners are "said petitioners opposed the confirmation of the nomination of said respondent to his present position before the Commission on Appointments; that petitioners filed criminal charges against said respondent before the COMELEC for violation of the Election Code of 1971 which are still pending until this date; and that this respondent was recommended to his present position by his co--respondent Gualberto Lumauig, the protestee in Election Case No. 5, and the latter's brother, Congressman Romulo Lumauig." [13]

In the memorandum filed by said respondent Judge before this Honorable Court, he stated the following:

"Briefly, the charges against your respondent boil down to one thing — alleged electioneering during the local elections. This — we can only say — that, during the time the respondent was allegedly engaged in partisan political activities, the Department of Justice reminded him and similar officials through directives to remain in their places of assignment to attend to all questions that may likely arise relating to election matters coming up within this respective jurisdictions.

"The evidence of petitioners consisted mainly of affidavits of alleged witnesses. These evidences were submitted to the COMELEC as well as to the Commission on Appointments. During the hearings in both forums, these evidences passed the close scrutiny of the investigators. If it is necessary to mention it here, it is observed that Hungduan, Ifugao, to which municipality your respondent was then accredited as Municipal Judge was never included as one of the protested municipalities. It becomes evident that the motive of the protestants is personal, devoid of merits. Hence, the Commission on Appointments decided our case favorably and exonerated the undersigned of the charges.

"It is amusing to observe that petitioners insist to anchor their rationale on bias and prejudice, still itchy to resuscitate a long cremated issue. Assuming that petitioners stiffly opposed the confirmation of your respondent in the Commission on Appointments, the Honorable Body searched rigidly into the truth of the allegations contained in petitioners' opposition and found instead falsity in them as a consequence, the Commission proceeded to confirm the appointment of the here in respondent, which was 'clean bill of health' to him."

Whatever be the merit of the charge of the petitioners that the respondent Judge Abad campaigned in support of the candidacy of the private respondents and their line-up of candidates; that they filed criminal charges against and opposed the confirmation of the appointment of the said respondent Judge; that said respondent Gualberto Lumauig and the latter's brother, Congressman Romulo Lumauig, the fact is that a strained personal relationship must have arisen between the petitioners, on the one hand, and the respondent Judge Abad, on the other. And not only the petitioners but even their political supporters as well may not be in a position to have full faith, trust and confidence on the impartiality of said respondent Judge.

In the case of *Pimentel vs. Salanga*, [14] where the petitioner sought the disqualification of the respondent Judge from sitting in four cases wherein he, petitioner, was counsel, on the ground that he was the complainant in an

administrative case which he himself filed against the respondent Judge with the Supreme Court, We denied the petition for disqualification but suggested that he might voluntarily inhibit himself, holding that:

"Efforts to attain fair, just and impartial trial and decision, have a natural and alluring appeal. But, we are not licensed to indulge in unjustified assumption, or make a speculative approach to this ideal. It ill behooves this Court to tar and feather a judge as biased or prejudiced, simply because counsel for a party litigant happens to complain against him. As applied here, respondent judge has not as yet crossed the line that divides partiality and impartiality. He has not thus far stepped to one side of the fulcrum. No act or conduct of his would show arbitrariness or prejudice. Therefore, we are not to assume what respondent judge, not otherwise legally disqualified, will do in a case before him. We have had occasion to rule in a criminal case that a charge made before trial that a party will not be given fair, impartial and just hearing is 'premature'. Prejudice is not to be presumed. Especially if weighed against a judge's legal obligation under his oath to administer justice 'without respect to person and do equal right to the poor and the rich'. To disqualify or not to disqualify himself then, as far as respondent judge is concerned, is a matter of conscience.

"All the foregoing notwithstanding, this should be a good occasion as any to draw attention of all judges to appropriate guidelines in a situation where their capacity to try and decide a case fairly and judiciously comes to the fore by way of challenge from any one of the parties. A judge may not be legally prohibited from sitting in a litigation. But when suggestion is made of record that he might be induced to act in favor of one party or with bias or prejudice against a litigant arising out of circumstance reasonably capable of inciting such a state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired. A salutary norm is that he reflect on the probability that a losing party might nurture at the back of his mind the thought that the judge had unmeritoriously tilted the scales of justice against him. That passion on the part of the judge may be generated because of serious charges of misconduct against him by a suitor or his counsel, is not altogether remote. He is a man, subject to the frailties of other men. He should, therefore, exercise great care and caution before making up his mind to act or withdraw from a suit where that party or counsel is involved. He could in good grace inhibit himself where that case could be heard by another judge and where no appreciable prejudice would be occasioned to others involved therein. On the result of his decisions to sit or not to sit may depend to a great extent the all-important confidence in the impartiality of the judiciary. If after reflection he should resolve to voluntarily desist from sitting in a case where his motives or fairness might be seriously impugned, his action is to be interpreted as giving meaning and substance to the second paragraph of Section 1, Rule 137. He serves the cause of the law who forestalls miscarriage of justice."

But in the case at bar, we would like to go one step further and hold that for the strict observance of the rule of due process, the respondent Judge Abad is hereby declared disqualified to continue hearing the election protests filed by Crescencio Paredes and Venancio Uyan against the private respondents Gualberto Lumauig and John Langbayan. For, as we have already observed above, there must already be a strained personal relationship between the petitioners, on the one hand and the respondent Judge Abad on the other; and not only the petitioners but even their political supporters as well may not be in a position to have full faith, trust and confidence on the impartiality of said respondent Judge. And "next in importance to the duty of rendering a righteous judgment is that of doing it in such a manner as will beget no suspicion of the fairness and integrity of a judge." [15] We should be very zealous in safeguarding this constitutional guarantee of due process. We have done so with greater zeal lately in the matter of the disqualification of Judges in the case of Luque vs. Kayanan [16] and Mateo, et al. vs. Villaluz [17].

In the case of Luque vs. Kayanan, the petitioner was one of the defendants and cross-defendants in a civil case pending before the respondent Judge. We held:

"1. This case presents an unedifying picture of animosity, hostility and bad blood between petitioner a lawyer and party defendant and cross-defendant, and respondent, a judge. From the events that occurred in the court

below, we gather the impression that the courtroom had been converted into an arena of recriminations between the two. Opprobrious language has been employed by both.

"It is the duty of both counsel and judge to maintain, not to destroy, the high esteem and regard for courts. Any act on the part of one or the other that tends to undermine the people's respect for, and confidence in, the administration of justice is to be avoided. And this, even if both may have to restrain pride from taking the better part of their system. To be expected then of petitioner and respondent is a sense of shared responsibility, a crucial factor in the administration of justice. And yet lack thereof is painfully apparent in the record of this case. It would appear that both petitioner and respondent were seized by a kind of ennui which immobilizes the sense of proportion of men trapped in situations where emotion runs loose.

xxx xxx xxx

"All suitors, we must say, are entitled to nothing short of the cold neutrality of an independent, wholly-free, disinterested and impartial tribunal. It has been said that next in importance to the duty of rendering a righteous judgment is that of doing it in such a manner as will beget no suspicion of the fairness and integrity of the judge. Let it not be said that the administration of justice in this country suffers from too many human imperfections. To our mind, respondent Judge should inhibit himself since it has become apparent that his further continuance in Case 4871 would not be in the best interest of justice, which he is bound to serve." [18]

And in the case of Mateo, et al. vs. Villaluz, petitioners were among those being tried by the respondent Judge for robbery in band with homicide. An extrajudicial statement by Reyes, one of the accused who implicated the petitioners was subscribed before the respondent Judge. Reyes, when called upon to testify as a witness for the prosecution, impugned his written declaration stating that it was executed as a result of a threat by a government agent. We ruled:

"x x x Petitioners are thus entitled to the relief sought. Respondent Judge could not be totally immune to what apparently was asserted before him in such extrajudicial statement. Moreover, it is unlikely that he was not in the slightest bit offended by the affiant's turnabout with his later declaration that there was intimidation by a government agent exerted on him. That was hardly flattering to respondent judge. It is not only that. His sense of fairness under the circumstances could easily be blunted. The absence of the requisite due process element is thus noticeable. There is this circumstance even more telling. It was he who attested to its due execution on October 1, 1971 wherein Rolando Reyes admitted his participation in the crime and in addition implicated petitioners. At that time, their motion for dismissal of the charges against them was pending its resolution was deferred by respondent Judge until after the prosecution had presented and rested its evidence against affiant, who was himself indicted and tried for the same offense, but in a separate proceeding. It cannot be doubted then that respondent Judge in effect ruled that such extra-judicial statement was executed freely. With its repudiation on the ground that it was not so at all, coercion having come into the picture there is apparent the situation of a judge having to pass on a question that by implication had already been answered by him. Such a fact became rather obvious. For respondent Judge was called upon to review a matter on which he had previously given his opinion. It is this inroad in one's objectivity that is sought to be avoided by the law on disqualification. The misgivings then as to the requirement of due process for 'the cold neutrality of an impartial judge' not being met are more than justified. Hence the conclusion reached by us." [19]

WHEREFORE, the orders of the respondent Judges dismissing the election protests respectively filed by the herein petitioners against the private respondents are hereby set aside, and the different Courts of First Instance where said protests are pending are hereby ordered to immediately continue with the trial thereof. The respondent Judge Francisco Men Abad, having been declared disqualified, is ordered to desist from continuing with the hearing of the election protests filed by petitioners Cresencio Paredes and Venancio Uyan against the private respondents Gualberto Lumauig and John Langbayan. Costs against the private respondents.

SO ORDERED.

Makalintal, C.J., Zaldivar, Fernando, Makasiar, Antonio, Esguerra, Muñoz Palma, and Aquino, JJ., concur.

Castro and Teehankee, JJ., concur in the result.

Barredo, J., I concur fully except as to G.R. No. 37715 in which I have not taken part.

[1] For Governor of Ifugao (in G.R. No. L-36927)

For Vice-Governor of Ifugao (in G.R. No. L-36928)

For Mayor of Masantol, Pampanga (in G.R. No. L-37715)

For Governor of Eastern Samar (in G.R. No. L-38331)

[2]

“Regular Elections for Provincial, sub-provincial, City, Municipal and Municipal District Offices.— On the second Monday of November, nineteen hundred and seventy-one and on the same day every four years thereafter, a regular election shall be held to elect the officials who will occupy all elective provincial, sub-provincial, city, municipal and municipal district offices throughout the Philippines. After the elections of nineteen hundred and seventy-one, only qualified voters in the municipalities of the province in which they are located can vote for elective officials of the province, except those in cities where the governing body consists of the governor and the provincial board of the province. The officials elected shall assume office on the first day of January next following and shall hold office for four years and until their successors shall have been elected and qualified, unless the provisions of the second paragraph of Section seventeen hereof apply.” (Section 9, Election Code of 1971)

[3] Respectively dated April 17, 1973, in G.R. Nos. L-36927-28; August 24, 1973, in G.R. No. L-37715; and December 14, 1973, in G.R. No. L-38331.

[4]

“All officials and employees in the existing Government of the Republic of the Philippines shall continue in office until otherwise provided by law or decreed by the incumbent President of the Philippines, but all officials whose appointments are by this Constitution vested in the Prime Minister shall vacate their respective offices upon the appointment and qualification of their successors.” (Section 9, Art. XVII, New Constitution, italics supplied).

[5] Section 9. Election Code of 1971, footnote 2.

[6] Black’s Law Dictionary, 3rd Edition, pp. 1558, 1717.

[7] For we do not know just now when that term of office will be cut short by law or by decree of the incumbent President.

[8] G.R. No. L-20390, November 29, 1968, 26 SCRA 171.

[9] Statement of the President, Vital Documents on the Declaration of Martial Law in the Philippines, Vol. 1, pp. 10-11.

[10] Italics supplied. “The Commission on Elections shall have the following powers and functions: . . . (2) Be the sole judge of all contests relating to the elections, returns, and qualifications of all Members of the National Assembly and elective provincial and city officials.” (Sec. 2, par. (2), Art. XIII-C, New Constitution.).

[11] “Ordinary election contest for a provincial, city, municipal and municipal district office x x x shall be filed

with the proper court of first instance by any candidate for the same office who had duly filed a certificate of candidacy within fifteen days, after the proclamation of his election. x x x " (Sec. 220, Election Code of 1971.)

[12] The Provincial Board of Canvassers as well as the Municipal Board of Canvassers shall meet not later than six o'clock in the evening of election day to canvass the returns and, upon completion of the statements, proclaim who had been elected to the provincial and municipal offices, respectively. (Secs. 209 and 216, Election Code of 1971).

[13] Petition for Certiorari filed in these cases, par. 5, pp. 2-3.

[14] G.R. No. L-27934, September 10, 1967, 21 SCRA 160.

[15] Luque vs. Kayanan, L-26826, August 29, 1969, 29 SCRA 165, 178.

[16] Luque vs. Kayanan, *supra*.

[17] G.R. No. L-34756, March 31, 1973, 50 SCRA 18.

[18] Luque vs. Kayanan, *supra*, pp. 173-174; 178. Italics supplied.

[19] Mateo, et al., vs. Villaluz, *supra*, p. 28.

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