

EMILIO P. CORTEZ, PETITIONER, VS. THE COMMISSION ON ELECTIONS ET AL., RESPONDENTS.

G.R. No. L-1679. October 16, 1947

Ponente: MORAN, C.J.

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MORAN, C.J.:

In the plebiscite which took place last March, the polling places corresponding to the barrios in the municipalities of Bacolor, Candaba, Arayat, Sta. Ana, San Luis, San Simon, Apalit, Sexmoan, Macabebe, Minalin, Mexico and Lubao, were transferred to the poblacion by resolution of the respondents municipal councils. In connection with the coming election, the approval of such transfer was sought by said municipal councils from the respondent Commission on Elections, approval which was granted because of the abnormal conditions of peace and order obtaining in the aforementioned municipalities. The approval was given over the objection of Dr. Emilio P. Cortez, candidate to the position of Provincial Governor in the Province of Pampanga. Hence, this petition for review. At the hearing before this court, attorney Rodrigo Perez of the Commission on Elections appeared for all the respondents.

The pertinent provisions of the law are sections 62, 63 and 66 of the Revised Election Code (Republic Act No. 180). They are as follows:

"SEC. 62. Designation of polling places.—At least seventy days before each regular election, the municipal council shall designate in each election precinct a place as provided in this Code where the meetings of the board of inspectors for registration and the election shall be held. (C. A., 357-56.)

"SEC. 63. Requirements for polling places.—* * * The polling place shall be located as centrally as possible with respect to the residence of the voters of the precinct, but it may be located also in the poblacion of the municipality upon petition of the majority of the voters of the precinct or by agreement of all the political parties, or by resolution of the municipal council, in subsequent elections after the election to be held on the second Tuesday of November, nineteen hundred and forty-seven. * * * (C.A., 357-57.)

"SEC. 66. Change of polling places.—After a polling place has been designated, its location shall not be changed until the next regular election, unless it is so ordered by competent authority, except in case it is destroyed or it cannot be used. (C.A., 357-60.)"

The general rule, therefore, under sections 62 and 63 is that a polling place shall be located "in each election precinct" and "as centrally as possible with respect to the residence of the voters of the precinct." There are, however, three exceptions in which, under section 63, the polling places may be located in the poblacion, namely: 1. When the majority of the voters so request; 2. By agreement of all the political parties; and 3. By a resolution of the municipal council, but this last-named exception shall take effect in elections subsequent to that of November of this year. The express inclusion of those three exceptions is an implied exclusion of all others.

Thus, section 66 cannot be construed as another exception giving the Commission on Elections authority to transfer a polling place from a barrio to the poblacion, not only because there is nothing in its language that may

warrant such construction but also because by such construction the exceptions provided in section 63 may become nugatory.

Section 66 should be construed in conjunction with section 63, the latter being a provision regarding location of polling places and the former a provision concerning changes that may be made after the polling places are located. Section 66 does not undertake to establish a new procedure for the making of such changes; it only provides that the changes may be made by competent authority, that is, by the officials designated by law and in the manner provided by law. Hence, when the location of a polling place is to be changed from a barrio precinct to the poblacion, the case comes within the purview of section 63, and the change should be made in the manner therein provided, namely, either by petition of the majority of the voters or by agreement of all the political parties.

The theory that section 63 is applicable only under normal conditions is contrary to the very wording of said section which contains provisions precisely to meet abnormal conditions. When for any serious difficulty a polling place cannot be located within the corresponding election precinct, a remedy is provided in said section consisting of a petition by the majority of the voters or by agreement of all the political parties for the transfer of the polling place to the poblacion. And when for any serious cause the holding of an election shall become impossible in any political division or subdivision, the remedy lies in the hands of the President who, upon recommendation of the Commission on Elections, may postpone such election for such time as he may deem necessary (section 8, Rev. Election Code).

The power given to the Commission by section 2, Article X of the Constitution, "to decide" all administrative questions concerning location of polling places, is a power that should be exercised when a question is brought before the Commission, and its decision should be rendered in accordance with law and not in contravention of law. The functions and powers of the Commission on Elections are limited by law. It has no legislative power to change or modify the law, nor may such power be delegated to the Commission. In the instant case, the action taken by the Commission on Elections finds no support in law.

Two writs of preliminary injunction have already been issued in this case, one prohibitory and another mandatory. The prohibitory injunction is directed against the respondents, ordering them to desist from placing or transferring to the poblacion the polling places corresponding to the barrio precincts, and the mandatory injunction is also directed to the respondents to restore to the respective barrios, as centrally as possible with respect to the residence of the voters, the polling places already transferred from said barrios to the poblacion.

For all the foregoing, the order issued by the Commission on Elections approving the resolution of the respondents municipal councils is reversed, and the preliminary writs of prohibitory and mandatory injunction issued in this case are made permanent, without costs.

Feria, Pablo, Hilado, Briones, Padilla, and Tuason, JJ., concur.

CONCURRING

PERFECTO, J.:

Petitioner, candidate for provincial governor of Pampanga in the elections to be held on November 11, 1947, seeks review of the majority decision of the Commission on Elections on the question of the location of the polling places in the twelve municipalities of Arayat, Apalit, Bacolor, Candaba, Lubao, Macabebe, Mexico, Minalin, San Luis, San Simon, Santa Ana, and Sexmoan, of the Province of Pampanga.

It appears that the polling places of the electoral precincts not comprised within the territorial limits of the poblacion were located by respondents municipal councils either within the poblacion or in barrios situated beyond the territorial confines of the respective precincts, in evident violation of section 63 of the Election Code as amended by Republic Act No. 180, enacted on June 20, 1947, which reads as follows:

"The polling place shall be located as centrally as possible with respect to the residence of the voters of the precinct, but it may be located also in the poblacion of the municipality upon petition of the majority of the voters of the precinct or by agreement of all the political parties, or by resolution of the municipal council, in subsequent elections after the election to be held on the second Tuesday of November, nineteen hundred and forty seven."

Petitioner promptly appeared before the Commission on Elections, praying that the polling places in question be placed and restored within the territorial limits of the precincts and "as centrally as possible with respect to the residence of the voters of the precinct," as is commanded in the above quoted section 63 of the Election Code.

The question was submitted for early decision of the Commission on Elections after the hearing on September 22 and 23 of 1947, during which evidence was received.

Notwithstanding the urgency of the question, as the first registration of voters for the next election was set by law for September 26 and 27, 1947, the Commission on Elections failed to render its decision before the said two dates. It was able to promulgate its decision only on September 30, 1947, when the first registration had already elapsed.

No explanation whatsoever was offered to justify the delay. Considering the urgency of the matter, and the very nature of electoral questions, the offering of an explanation is imperative to avoid the conclusion that a dereliction of official duty has been committed.

By majority vote, the three-member Commission on Elections not only decided against petitioner, by affirming the illegal action of the twelve municipal councils, but ordered that all the polling places in each of the twelve municipalities in question not yet located in the poblacion be immediately transferred therein.

There is absolutely no dispute as to the clear wording of section 63 of the Election Code. No one made any attempt to dispute the fact that under said section the polling places "shall be located as centrally as possible with respect to the residence of the voters of the precinct." Although the section provides for three exceptions—provided later by Congress for the purpose of facing the abnormal conditions, which may prevail in some precincts—there is absolutely no controversy that none of the exceptions is present in this case.

There is absolutely no dispute that the action of respondents in placing the polling places of the twelve municipalities of Pampanga in question outside of the territorial limits of the respective electoral precinct violates a specific and clear provision of section 63 of the Election Code. As a matter of fact, no attempt has been made to put in doubt the violation, which is a criminal offense punishable under the code. No reason or explanation has been advanced to justify or even to mitigate the action of respondents municipal councils in placing the polling places outside of the electoral limits of the respective precincts in contravention of section 63 of the Election Code.

Because respondent Commission on Elections believes that peace and order are in danger in the precincts in question, it tries to justify its majority decision upon the authority of section 66 of the Election Code.

Said section provides:

"Change of polling places.—After a polling place has been designated, its location shall not be changed until the next regular election, unless it is so ordered by competent authority, except, in case it is destroyed or it cannot

be used."

It is advanced that the "competent authority" mentioned in the above provisions refers but to the Commission on Elections. It is contended that the Commission on Elections, under section 66, is granted unlimited powers as to the location of polling places, and even to put them where it is expressly prohibited by section 63.

The theory is absolutely wrong. It is premised on a political philosophy basically Fascistic or Nazi. It is incompatible with the system of a government of laws. It is contrary to the most elemental principles of democracy. Sooner or later it will lead to totalitarianism.

Section 66 does not grant a blanket authority to the Commission on Elections or any other competent authority to make changes of the location of polling places without any limit. The power that may be exercised under section 66 is always limited by law. Under our Constitution, unlimited or absolute powers are inconceivable. No individual or officer is above the law. All official powers are based on law and are limited by law. Official discretion, whether expressly or impliedly granted, can only be exercised within the bounds of the law. The freedom of action in the exercise of official discretion is limited within the sphere of the law. It cannot transcend the confines of the law. Once it goes beyond its confines, it ceases to be legal discretion to become tyranny or despotism.

The principle of immovability of polling places within the territorial limits of the precinct, as set up by the Election Code, admits two exceptions: 1. When the polling place is destroyed; and 2. When competent authority should provide otherwise. In either case the polling place may be transferred, but never outside the territorial limits of the precinct unless in the three exceptions specifically provided by section 63 of the Election Code.

It is hard to enumerate the cases in which a competent authority may be justified in transferring the location of a polling place within the territorial limits of a precinct. The difficulty of enumerating them is recognized by the silence of the Election Code. Each case must be viewed taking into consideration the fundamental purpose that honest and free elections be held. But in all cases, the specific precepts of the law should not be violated.

The "competent authority" mentioned in section 66 may refer either to the Commission on Elections, to the respective municipal councils, or other authority. A conflict or litigation may occur as to the location of the polling places and they may reach courts of justice. In deciding the litigation, tribunals are evidently competent authority under the contemplation of section 66. At any rate, the competent authority mentioned by section 66 whoever he may be, cannot do anything against the law. Any action it may take regarding the location of a polling place must conform to law and must not violate specific provisions of the law such as is contained in section 63.

The fact that the provisions of section 66 have been interpreted before the existence of the Commission on Elections, as granting the Secretary of the Interior unlimited power to make transfers of polling places, has been advanced in support of the theory that the Commission on Elections has been and is invested by the same unlimited powers. If we take in mind the reasons for the creation of the Commission on Elections, the argument will appear to have a contrary effect to that intended by it. Precisely, the growing public distrust and dissatisfaction upon the way the Secretaries of the Interior were exercising their powers under the election laws, including their arbitrary resolutions as to the location of polling places, compelled the National Assembly to create, by constitutional amendment, an independent Commission on Elections.

As one of the members of the National Assembly who took active part in the enactment of the amendment, we know that the main purpose behind the creation of the Commission on Elections, was to place the supervision and control of the conduct of the elections and the enforcement of the election laws in the hands of an independent body, composed of public-spirited men, who, with the consciousness of the high dignity of performing the duties

of a constitutional office, shall administer the law justly, impartially, without any partisanship, and never countenance for any reason or consideration an illegality.

The creation of the new body was intended to remedy the unsatisfactory situation created by the general belief, among the majority and the minority parties, that the Secretaries of the Interior were administering the election laws not for the purpose of securing an honest and free elections, but to serve the political interests of the party in power to which the secretaries belonged. Shall the Commission on Elections relapse on the same errors, defects, and vices upon which the National Assembly, acting under the strong pressure of public opinion, transferred the powers then exercised by the Secretary of the Interior to the Commission on Elections?

The Commission on Elections contends that section 2 of Article X of the Constitution supports the theory that the commission is vested with unlimited powers regarding the location of polling places, invoking to said effect the following provision : "* * * It shall decide, save those involving the right to vote, all administrative questions, affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and of other election officials. * * *"

The contention is based on a misreading of the provisions of section 2 of Article X of the Constitution. There is nothing in said section to the effect that in order to decide questions as to the location of polling places the Commission on Elections may go beyond the field of the law, and resort to the unlimited reservoir of its imagination and caprice. On the contrary, as worded, the constitutional provision precludes any idea to the effect that the Commission on Elections may violate the law with impunity. Section 2 of Article X of the Constitution provides:

"The Commission on Elections shall have 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. * * * The decisions, orders, and rulings of the commission shall be subject to review by the Supreme Court."

From the above, there should not be any mistake that the Commission on Elections cannot exercise any function or power which may contravene the law. To make it more emphatic, it is provided that the Supreme Court is empowered with supervisory control over the decisions, orders, and rulings of the Commission. If the Commission on Elections may trample upon the provisions of section 63 of the Election Code, upon the theory that it has unlimited powers regarding the location of polling places under the authority of section 66 of the Election Code and of section 2 of Article X of the Constitution, then the Supreme Court may not supervise, review or reverse the decisions, orders, and rulings of the Commission on Elections on the matter. The absurdity is self-evident. If the Supreme Court may review the actions taken by the Commission on Elections, it has to follow some standard, and it cannot be anything other than the law.

Furthermore, the power of decision granted by section 2 of Article X of the Constitution to the Commission on Elections in the part invoked by respondents is limited to "all administrative questions." which can only include enforcement of the law and exercise of administrative discretion within the law.

For all the foregoing, we conclude that:

- Section 63 of the Election Code provides that polling places should be located within the territorial limits of their precincts, "as centrally as possible with respect to the residence of the voters of the precinct."
- Said section admits exceptions, none of which is present in the instant case.
- Section 66 of the Election Code does not grant the Commission on Elections unlimited powers with regard to the location of polling places.

- Section 2 of Article X of the Constitution does not grant the Commission on Elections any power to contravene the law.
- Violation of section 63 of the Election Code is a criminal offense punishable under the provisions of the code.
- The Commission on Elections failed in its official duties when it unreasonably delayed the rendition of the decision here in question. A clearer and keener consciousness of official responsibility would not have allowed it to commit such delay.

The conclusion is unavoidable that the municipal councils of the twelve municipalities of Pampanga in question committed an illegality in placing in the poblacion the polling places not pertaining thereto, in contravention of section 63 of the Election Code. The illegality is not mitigated by the illegal action of the Commission on Elections in rendering the decision now under review before us.

Said decision is reversed and the writs of preliminary prohibitory and mandatory injunction issued by this Court should be made permanent.

DISSENTING

PARAS, J.:

I vote for the affirmance of the decision of the respondent Commission on Election, the following findings of which are controlling herein, especially because the record before us does not contain the evidence presented by the parties:

"1.º Que las condiciones de la paz y del orden publico en la provincia de Pampanga, sobre todo en la zona donde estan asentados los municipios de Candaba, Arayat, Sta. Ana, San Luis, San Simon, Apalit, Sexmoan, Macabebe, Minalin, Mexico y Lubao, son aun anormales;

"2.º Que los barrios de los citados municipios estan a merced de los huks al mando de Taruc, de los maleantes, disidentes y comunistas;

"3.º Que en cualquier hora inesperada pueden ser dichos barrios asaltados e invadidos y sometidos a sus atropellos, a sus extorciones, a sus desmanes, los cuales suelen culminar en asesinatos;

"4.º Que estos barrios no estan mejor protegidos ni defendidos por los agentes de autoridad, como lo estan las poblaciones de dichos municipios;

"5.º Que muchos de estos barrios estan casi desiertos por haber evacuado el ochenta por ciento de sus habitantes a otros lugares, y la mayoría de estos evacuados residen en la poblacion o entran en la misma para dormir y pasar la noche;

"6.º Que las poblaciones estan mejor protegidas que los barrios, porque en aquellas o en sus cercanias estan puestos destacamentos militares de los MPs, y los alcaldes cuentan con los grupos o unidades de guardias civiles armados bajo la autorizacion del Secretario del Interior."

"Los colegios de que se trata en este expediente estan en actualidad establecidos en la poblacion, a que fueron trasladados durante la celebracion de las elecciones por el plebiscito en marzo de este año de 1947."

The Commission on Elections is ordered by the Constitution (Article X, section 2) to have "exclusive charge of the enforcement and administration of all laws relative to the conduct of election." It appearing that eighty per cent of the inhabitants of the barrios in the municipalities in question have evacuated and are practically or

actually residing in the poblacion, the location of the polling places in said poblacion is justified under, and in substantial compliance with, the law. It is noteworthy that section 63 of the Revised Election Code requires that "the polling places shall be located as centrally as possible with respect to the residence of the voters." It is to be remembered also that the polling places in question were located in said poblacion during the plebiscite held last March, with the result that the decision now under review merely gives effect to the General instructions of the Commission on Elections which provide, among others, that "the location of the polling places made in the last plebiscite shall not be changed without the previous approval of this Commission." The situation before us does not even involve a change or transfer, since the Commission merely maintained the old location. There would seem to be a need for insisting on a formal petition of the majority of the voters, as required by section 63 of the Election Code, only if the polling place is being transferred to a location wherein they do not reside, which is not the case before us, because the Commission had established the polling places in the very site where eighty per cent of the inhabitants are living.

In this connection, it is not amiss to call attention to the following observations of Mr. Justice Abad Santos in *Sumulong vs. The Commission on Elections*, G.R. No. 48609, decided on October 10, 1941: "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 strategists, and its knowledge derived from actual experience in dealing with political controversies, is in a peculiarly advantageous position to decide complex political questions."

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