

PAULINO M. NICO, PETITIONER, VS. MANUEL BLANCO, JUDGE OF FIRST INSTANCE OF ILOILO, AND JOSE F. MONSALE, RESPONDENTS.*G.R. No. L-2036. June 30, 1948*

Ponente: BENGZON, J.

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This is a petition to enjoin the Honorable Manuel Blanco, Judge of Iloilo, from taking further steps in election case No. 1040, entitled Dr. Jose F. Monsale, contestant, versus Paulino M. Nico, contestee.

It appears that on December 8, 1947, Dr. Monsale protested the proclamation of Paulino M. Nico as mayor-elect of Miagao, Iloilo, by a petition alleging, among other things, that in the elections of November, 1947, both had duly filed their respective certificates of candidacy for the office of mayor of Miagao; that he was duly voted for by the qualified electors of said municipality and received 2991 votes as against 2291 votes cast for the protestee, and that the boards of election inspectors in all precincts of the said municipality fraudulently and illegally did not count the ballots in his favor, resulting in the unwarranted proclamation of said contestee Paulino M. Nico.

After being summoned, the latter filed a motion for dismissal of the protest, on the ground that the court had no jurisdiction to act on the matter, because Dr. Jose F. Monsale was not a registered candidate voted for in the aforesaid elections. In support of his motion, contestee submitted copy of the telegram flent by the Commission on Elections to the municipal secretary of Miagao on November 9, 1947, stating that:

"In view withdrawal of Jose Monsale on October ten * * * he can no longer be a candidate in spite his desire to withdraw his withdrawal stop Jose Monsale is therefore no longer a candidate".

Replying to the motion, Dr. Monsale argued that to confer jurisdiction upon the court it was enough to allege — as he did — that the parties were duly qualified voters, were candidates inscribed and had been voted for. He also claimed that it was premature for contestee to bring up at that time the reported withdrawal of his candidacy, which is a matter of evidence to be threshed out when the case is debated on the merits.

The court set a date for admission of proofs to establish the motion to dismiss. Documents were introduced on both sides. After considering the same Judge Blanco provisionally refused to dismiss, explaining that, "por resultar de la prueba (el Exh. A) articulada, sobre la moción de sobreseimiento de la solicitud, que el recurrente habia avisado en 6 noviembre 1947 a la Comision Electoral que daba por retirado lo manifestado a ella por él en 10 octubre 1947 y que continuaba adelanto con su candidatura para el cargo de alcalde del municipio de Miagao, de este provincia; sin juzgar por ahora, por entenderlo prematura, el efecto legal de esa cuestión, dadas los alegaciones de la solicitud". Said judge therefore ordered the contestee to answer the motion of protest.

This petition for certiorari was immediately submitted to us, upon the allegation that respondent Judge Blanco had acted without or in excess of jurisdiction and with grave abuse of discretion.

It will be observed that although Judge Blanco declined to dismiss, he expressly reserved opinion about the legal effect of Dr. Monsale's cancellation of the withdrawal of his candidacy, which was the gist of the challenge to the

court's jurisdiction. In effect the order was a provisional denial until the protest is adjudged on the merits. Consequently petition has no basis, the court not having definitely ruled on the issue of jurisdiction. If petitioner should counter that it was a grave abuse of discretion for the court to postpone definite action on his petition for dismissal, the answer would be that our rules expressly permit judges "to defer action on such motions until the trial, if the ground alleged therein does not appear to be indubitable" (Rule 8, section 2). That the point raised in the motion is not so easy to solve is shown by the circumstance that here, among the members, there is no unanimous view. Anyway it is quite probable that had Judge Blanco categorically overruled I herein petitioner's contention, still his remedy would be to raise the same question when he appeals from an adverse decision on the merits.

It follows from the foregoing considerations that this petition must be, as it is hereby, denied, with costs. So ordered.

Parás, Actg. C. J., Feria, Pablo, Briones, Padilla, and Tuason, JJ., concur.

CONCURRING

PERFECTO, J.:

The procedural grounds stated in the decision penned by Mr. Justice Bengzon are not the only ones that induced us to vote for the denial of the petition. We are of opinion that there are substantive grounds upon which to base denial, and the corresponding legal question should be faced and decided squarely, because it has been squarely raised in the pleadings, it was the subject of extensive arguments by counsels, and upon it the members of this Court have thoroughly deliberated.

The filing of a certificate of candidacy is a technicality that should be enforced before the election, but can be disregarded after the electorate has made the choosing. This is only in accordance with the doctrine, laid down by the Supreme Court, to effect the provisions of the election laws, generally, are mandatory before the election and directory after. Here we are reiterating an opinion expressed in another case the decision of which is pending promulgation weeks ago. If respondent Monsale has garnered the majority of the votes cast for Mayor of Miagao, notwithstanding the fact that he has withdrawn his certificate of candidacy, withdrawal that he withdrew two days before the election, the electors completely disregarding what has been done about said certificate of candidacy, it will necessary much more than whole system of political philosophy to convince us not to give effect to the will of the people. The solemn declaration in the fundamental law that sovereignty resides in the people would, otherwise, be whimsical.

No pretense is made that, besides the disputed effects of a withdrawn withdrawal of a certificate of candidacy, any Evil has resulted by the shifting attitude of a candidate in regards to the orderly holding of suffrage, on any sector of public interest. Without putting in issue the legislative wisdom regarding the filing of a certificate of candidacy, there is no way of brushing aside the universal conviction to the effect that election legal provisions are enacted, never to stifle or defeat the popular will, but give it the freest sway, as an indispensable factor in the existence, functioning and preservation of democracy.

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