

NICANOR C. IBUNA, PETITIONER, VS. COMMISSION ON ELECTIONS AND THE MUNICIPAL TREASURER/AND BOARD OF CANVASSERS, SAN JUAN, RIZAL, RESPONDENTS.

G.R. No. L-28328. December 29, 1967

Ponente: FERNANDO, J.

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FERNANDO, J.:

The scope of the power of the Commission on Elections to appoint members of the municipal board of canvassers to replace those councilors who are candidates is to be inquired into in this certiorari proceeding. The law provides: "The municipal council shall constitute the municipal board of canvassers, excluding the members who are candidates and who shall be replaced by the Commission on Elections with registered voters of the same party." [1]

Petitioner Nicanor C. Ibuna, as chairman of the local Nacionalista Party of San Juan, Rizal, impugned the appointment of one Cesar Advincula, a Liberal, to the municipal board of canvassers of San Juan to replace Calixto Dungo, who was elected in 1963, his certificate of candidacy then showing that he was a Nacionalista running as an independent. He was a candidate anew in 1967, his certificate of candidacy categorically stating "that he belongs" to the "Nacionalista Party". [2] The appointment by respondent Commission on Elections of one Arturo Casanova, also a Liberal, to such board of canvassers in place of Arturo de Guzman, was likewise challenged. De Guzman was elected councilor in 1963, his certificate of candidacy was to the effect that he was then a Nacionalista. His certificate of candidacy when he ran for reelection in 1967 was not made a part of the petition presumably because he had by that time affiliated with the Liberal Party, according to the answer of the respondent Commission on Elections.

It is the stand of respondent that such a change of party affiliation rendered valid the aforesaid choice of a Liberal in place of Councilor de Guzman. As for Councilor Dungo, respondent Commission on Elections defended its action on the allegation that the person named by it was the one recommended by him, there being on his part an express objection to the nominee of petitioner Ibuna. "The party representation, as a matter of Commission's policy, must be preserved. But in the absence of any party, then the candidate himself shall have the choice to recommend his replacement." For as the Commission stated: "When Mr. Dungo was elected in 1963, but proclaimed in September 9, 1967 and assumed office thereafter, he was still [an] independent candidate." [3]

1. As to the case of the replacement of Councilor Dungo, it being clear from his certificates of candidacy that both in 1963 and in 1967, he was a Nacionalista, the appointment of a person who is not a registered voter of such party finds no support in the law. If it were true that his certificate of candidacy indicated the absence of any party as was the thinking of respondent Commission, then perhaps the discretionary power vested in the Commission could have afforded a colorable justification for the choice of the person named to replace him, who admittedly was not a member of the Nacionalista Party.

Such is not the case however, and the statutory provision is quite explicit. Congress having pronounced its will, it

is the duty of the Commission to obey. To paraphrase the opinion of the then, Justice now Chief Justice, Concepcion, in *Abcede v. Imperial*,^[4] the question of policy is for Congress not the Commission to decide. If it is in disagreement with what the law requires, the remedy is to call the attention of the legislative body with such suggestion or proposal for change as it may deem best. While recognizing then that it acted in good faith, it appears undeniable that in thus choosing a person not a registered voter of the same party, respondent Commission acted "beyond the bounds of its jurisdiction."

In another decision through the then Chief Justice Moran, this Court stated: "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."^[5]

A word more. Respondent Commission in its choice of replacement is not restricted to the person or persons recommended by petitioner as chairman of the Nacionalista Party in San Juan. All that the law requires is that its appointee is a registered voter of such party.

2. In connection with the replacement of Councilor de Guzman who was elected in 1963 as a Nacionalista but who thereafter became a Liberal, there is no unanimity of opinion among the members of the Court concerning the validity of the action taken by the Commission.

It is the majority view however that what the Commission did was in accordance with the literal language of the law, which speaks of excluding from the municipal board of canvassers "the members who are candidates and who shall be replaced by the Commission on Elections with registered voters of the same party." As of the time of the disqualification of Councilor De Guzman, he was a member of the Liberal Party; his replacement should therefore be a registered voter of such party.

As was declared by this Court in a 1913 decision, its first and fundamental duty is to apply the law. "Construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them."^[6] Moreover, if the choice were made to fall on a person belonging to a different party, then it might upset the balance of power unnecessarily. Such an approach likewise is indicated by *Cunanan v. Tan*,^[7] where this Court implied that changes of a permanent character as to membership in political parties in the House of Representatives would not be denied recognition in the composition of the Commission on Appointments.

A minority of this Court, Justices Zaldivar, Sanchez, and the writer of this opinion, is of the belief, however, that the language of the law is not sufficiently plain and explicit to call for only one interpretation. To paraphrase Cardozo, there are gaps to be filled and ambiguities to be cleared. It is the thinking of this group that if the time that determines the party status of the replacement is the date of the disqualification and not the date of the election, then added encouragement would be given elective officials who for reasons of their own are not averse to changing parties. Under the circumstances, an interpretation that would affix the stamp of approval on councilors becoming turncoats would hinder rather than promote party solidarity and strength as seemed to be envisioned both in the Constitution and the Election Code. Moreover, the right to the replacement should be looked upon as appertaining not to the candidate but to the party, without whose help in the first place he could not have been elected.

There is no question however but that the language of Section 167 could be rendered much more explicit so that it may be crystal clear and free from doubt. It is to be admitted also that in the light of previous decisions, such task has been thought of as properly appertaining to the legislative branch of the government.

WHEREFORE, the appointment of Arturo Casanova to replace Arturo de Guzman in the municipal board of

canvassers of San Juan, Rizal is sustained, and the appointment of Cesar Advincula to such board to replace Councilor Calixto Dungo nullified. The restraining order is lifted to enable respondent Commission on Elections to act in accordance with the opinion of this Court. The replacement of Councilor Dungo having been chosen, the board of canvassers of San Juan, Rizal as reconstituted shall proceed according to law. All proceedings of the board of canvassers of the Municipality of San Juan, Rizal where Cesar Advincula acted are declared null and void. Without costs.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Ruiz Castro, and Angeles, JJ., concur.

[1] Sec. 167 (a).

[2] Annexes D and E, Petition.

[3] Answer.

[4] 103 Phil. 136 (1958).

[5] Cortez v. Commission on Elections (1947) 79 Phil. 352, 355-356.

[6] Lizarraga Hermanos v. Yap Tico, 24 Phil. 504. See also People v. Mapa, L-22301, August 13, 1967.

[7] L-19721, May 10, 1962.

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