

**LEONARDO EQUIPILAG, PETITIONER, VS. HONORABLE GIBSON ARAULA, PRESIDING JUDGE, BRANCH X, CFI, SOUTHERN LEYTE, AND ARCADIO DANGATE, RESPONDENTS.***G.R. No. L-39056. October 15, 1974*

Ponente: MAKASIAR, J.

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Petitioner Leonardo Equipilag, who garnered the second highest number of votes in the election of November 8, 1971, seasonably filed a protest dated November 24, 1971 against the election of respondent Arcadio Dangate as mayor of Pintuyan, Southern Leyte, on the ground of fraud, illegal counting of votes and massive vote-buying.

Respondent Arcadio Dangate, as protestee, filed his answer dated December 4, 1971. Thereafter, respondent Dangate filed a motion dated February 12, 1973 to dismiss the electoral protest on the ground that after the proclamation of martial law, the position of mayor became "a mooted matter, and of doubtful existence"; and after the ratification of the new Constitution, the mayoralty position became a newly created position and he is only a hold-over occupant no longer subject to an electoral protest. Despite petitioner's opposition, respondent Judge sustained the motion on the second ground, and forthwith dismissed the protest.

Hence, this petition. WE reverse the disputed order of dismissal.

The issue raised had been decided in the cases of *Paredes, et al. vs. Abad, etc., et. al.* (L-36927-8); *Sunga vs. Mosqueda, et. al.* (L-37715); and *Valley vs. Caro, etc., et. al.* (L-38331, April 15, 1974, 56 SCRA 522); as well as in *Nunez vs. Averia, et. al.* (L-38415, June 28, 1974).

In a specious attempt to remove the instant case from the rule enunciated in the aforecited cases, respondent Dangate insists that he is not the same mayor whose election in 1971 is now being protested, because the term continue in the clause "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. x x x" (Sec. 9, Art. XVII, New Constitution), signifies a break or interruption in the occupation by the herein, protestant of the position of mayor after his election in 1971.

It should be emphasized that before any official or employee can continue in office under Section 9 of Article XVII of the new Constitution, he must first be validly appointed or elected to the position, prior to the ratification of the new Constitution. The right of respondent Dangate to continue as mayor depends upon the validity of his election in 1971 by virtue of which he occupies the position of mayor. He was not appointed by the President nor elected to the position after the ratification of the new Constitution. Thus, We said in the *Paredes*, *Sunga* and *Valley* cases, *supra*, which was reiterated in the *Nunez* case, *supra*:

"It must be emphasized that the right of they private respondents to continue in office indefinitely arose not only by virtue of Section 9 of Article 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.

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"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.'

"Section 7 of Article 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, Article 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." (56 SCRA 528-529).

General Order No. 3, issued by the President of the Philippines on September 22, 1972, merely reiterated his powers under Section 9 of Article XVII of the new Constitution. The President did not intend thereby to modify the aforesaid constitutional provision.

Thus, until a subsequent law or presidential decree provides otherwise, the right of respondent Dangate to continue as mayor rests on the legality of his election which has been protested by herein petitioner. Should the court decide adversely against him the electoral protest, respondent Dangate would cease to be mayor even before a law or presidential decree terminates his tenure of office pursuant to said Section 9 of Article XVII of the 1973 Constitution.

WHEREFORE, RESPONDENT COURT'S ORDER OF DISMISSAL DATED JUNE 30, 1973 IS HEREBY SET ASIDE AND THE RESPONDENT COURT IS DIRECTED TO IMMEDIATELY PROCEED WITH THE TRIAL AND DETERMINATION OF THE ELECTION PROTEST BEFORE IT ON THE MERITS. THIS DECISION SHALL BE IMMEDIATELY EXECUTORY UPON PROMULGATION HEREOF. SO ORDERED.

Castro, (Chairman), Teehankee, Esguerra, and Munoz Palma, JJ., concur.

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