

LORETO SEARES, PETITIONER, VS. THE HON. COMMISSION ON ELECTIONS, CARMELO BARBERO AND GAVINO BALBIN, RESPONDENTS.

G.R. No. L-34381. May 31, 1977

Ponente: ANTONIO, J.

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ANTONIO, J.:

Original action for certiorari filed by Loreto Seares on November 23, 1971 to set aside the minute resolution of the Commission on Elections (COMELEC for brevity), dated October 26, 1971, denying his petition for the cancellation of the certificates of candidacy of respondents Carmelo Barbero and Gavino Balbin under Section 31 of the Election Code Of 1971, and also the minute resolution dated November 10, 1971, denying his motion for reconsideration, in Electoral Case No. C-126.

Respondents Carmelo Barbera and Gavino Balbin, both residents of the Municipality of Bangued, Province of Abra, were candidates for the offices of Governor and Vice-Governor, respectively, for the elections of November 8, 1971, their certificates of candidacy having been given due course by the COMELEC on September 13, 1971. At that time, respondent Barbero was the incumbent. Congressman Of Abra and had still two(2) years of his term to serve as such Congressman. He was also a member and President of the Liberal Party in Abra.

On October 25, 1971, or forty-six (46) days after the legal deadline for the filing of certificate of candidacy which was September 9, 1971 and only fourteen (14) days before Election Day, November 8, 1971, petitioner Loreto Seares, representing himself as a qualified voter in, and as a delegate to the Constitutional Convention from, Abra, with residence and postal address at Bangued, Abra, filed a petition with the COMELEC (Electoral Case No. C-126) for the cancellation of the certificates of candidacy, under Section 31 of the Election Code of 1971, of respondents Carmelo Barbera and Gavino Balbin, alleging, among others, that said respondents Barbero and Balbin have no bona fide intention to run for the offices of Governor and Vice-Governor of Abra, for the reason that on the occasion of a political meeting held on September 26, 1971 where respondents Barbero and Balbin were proclaimed as the Liberal Party candidates for Governor and Vice-Governor, and in some political meetings held by them thereafter, Barbero had stated that if he and Balbin were elected, he will not qualify as Governor so as to allow Balbin to take the post of Governor, while he will continue as Congressman of Abra, hence, a violation of Section 31 of the Election Code of 1971; that Barbero's speech was tape recorded and part of the speech referred to was delivered in English and Ilocano;[1] that the full text of Barbero's speech as tape recorded by Station DZPA of Abra Community Broadcasting Corporation, Bangued, Abra, is kept by said broadcasting station; and that this tape recorded speech was also rebroadcasted on October 3, 1971 upon the request of said respondents. Petitioner then prayed that the certificates of candidacy of respondents Barbero and Balbin be not given due course and, instead; they be ordered cancelled and expunged from the records.[2]

On October 26, 1971, respondent COMELEC issued a minute resolution denying, for lack of merit, petitioner's petition for the cancellation of the certificates of candidacy of respondents Carmelo Barbero and Gavino Balbin.

On October 27, 1971, petitioner moved for the reconsideration of said minute resolution, supported by his memorandum dated November 2, 1971.

On November 10, 1971, or two (2) days after Election Day, November 8, 1971, respondent COMELEC issued another minute resolution denying, for lack of Merit, petitioner's motion for reconsideration.

Hence, petitioner filed on November 23, 1971 the present petition for certiorari contending, among others, that respondent COMELEC has decided a question of substance not heretofore determined by this Court, and has decided this question not in accord with the Election Code of 1971 because what the COMELEC should have done was to refuse giving due course to the certificates of candidacy of respondents Barbero and Balbin by applying Section 31 of said Code; and that respondent COMELEC has gravely abused its discretion amounting to lack of jurisdiction. Petitioner then prayed that the aforesaid minute resolutions of the COMELEC dated October 26, 1971 and November 10, 1971,[3] as well as the certificates of candidacy of respondents Barbero and Balbin, be declared null and void; and that said respondents be disqualified from assuming the office of Governor and Vice-Governor, respectively.

In the meanwhile, or on December 1, 1971, respondents Barbero and Balbin were proclaimed, by the Provincial Board of Canvassers of Abra, as the Governor-elect and Vice-Governor-elect, respectively, in the election of November 8, 1971,[4] they having garnered overwhelming votes as against their respective opponents.[5] During the fifteen-day period after the proclamation, no voter contested the election of either Barbero or Balbin, on the ground of ineligibility, cases of which have to be decided within thirty (30) days.[6]

In due time, respondents COMELEC, Barbero and Balbin filed their respective comments, answers and memoranda to the instant petition for certiorari. They contend, among others, that the provision of said Section 31 of the Election Code of 1971 refers only to those cases where the certificate of candidacy has been filed to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances which demonstrate that the candidate has no bona fide intention to run for the office and thus by such artifice prevent a faithful determination of the true will of the electorate. In short, said Section 31 refers only to nuisance candidates of which category respondents Barbero and Balbin do not appertain.

In its answer, respondent COMELEC contended that the instant case has become moot considering that respondents Barbero and Balbin have already been proclaimed on December 1, 1971 as Governor-elect and Vice-Governor-elect of Abra, respectively, and it is a general principle of law that proclamation of the winning candidates by the Board of Canvassers made in the regular performance of duty makes the election of these officials a consummated act,[7] and that, since this is a case of disqualification in office, petitioner should have filed a case of quo warranto before the Court of First Instance, and not before the COMELEC.

Prescinding, however, from the foregoing, and considering that respondent Carmelo Barbero failed to take his oath as Governor within the period provided by law, thereby forfeiting his right to the position,[8] and, as a consequence, respondent Gavino Balbin succeeded respondent Barbero as Governor of Abra,[9] pursuant to Section 17 of said Code,[10] without the former having been removed or replaced; and considering further, that the four-year term of office of those elected and proclaimed in the election of November 8, 1971, particularly the offices of Governor and Vice-Governor has already expired, We find the present petition as moot and academic.

ACCORDINGLY, the petition for certiorari is hereby DISMISSED, without any pronouncement as to costs.

Fernando, (Chairman), Barredo, Aquino, and Martin, JJ., concur.
Concepcion, Jr., J., on leave.

[1] Annex "D", Petition.

[2] Annex "A" of Petitioner's Reply to Comment, pp. 54-69, SC Rollo.

[3] Annexes "A" and "B", Petition.

[4] Certificate of canvass of the votes cast and proclamation of the winning candidates for provincial offices by the Provincial Board of Canvassers on November 8, 1971 Election, Annex "8" of Respondent Barbero's Answer dated March 1, 1972, p. 192, SC Rollo.

[5] Candidates for Governor:

Carmelo Z. Barbero 23,163 Votes

Petronilo V. Seares 16,762 “

Elpidio B. Valera 297 “

Candidates for Vice-Governor:

Gavin V. Balbin 20,982 Votes

Paterno P. Aquino 17,568 “

Pershing Mendez 54 “

[6] Section 219, Election Code of 1971.

[7] *Lachica v. Yap*, L-25379, September 2, 1958.

[8] Pursuant to Section 24 of the Election Code of 1971, which provides:

"SEC. 24. Candidate holding elective office. -

* * * * *

Every elected official shall take his oath of office on the day his term of office commences, or within ten days after his proclamation if said proclamation takes place after such day. His failure to take his oath of office as herein provided shall be considered forfeiture of his right to the new office to which he has been elected unless said failure is for a cause or causes beyond his control." (*Italics supplied.*)

[9] Balbin's Answer, p. 126, SC Rollo.

[10] The pertinent provision reads:

"SEC. 17. Vacancy in elective provincial, sub-provincial, city, municipal or municipal district office. – In case of a permanent vacancy in a provincial, sub-provincial, city, municipal or municipal district office, the officer next in rank shall assume the vacant office for the unexpired term: Provided, That such officer meets all the requirements for the office." (*Italics supplied.*)

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