

**ANTONIO H. AGCAOILI, JR., PETITIONER, VS. MANUEL B. SANTOS AND COMMISSION ON ELECTIONS, RESPONDENTS.***G.R. No. L-52791. February 26, 1981*

Ponente: FERNANDO, C.J.

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At the time of the filing of this petition for prohibition with this Court on February 29, 1980, it was specifically alleged that private respondent Manuel B. Santos was to take his oath of office as Vice Mayor of Laoag City on the first Monday of March, 1980. The grievance alleged by petitioner Antonio H. Agcaoili, Jr. is that such respondent was "clearly ineligible and disqualified to be voted upon to the said office under the pertinent provisions of the Constitution, Presidential Decrees and the 1978 Election Code and that, therefore, all the votes cast in the aforesaid elections for Vice Mayor should be counted in favor of the petitioner as the officially nominated and proclaimed candidate of the KBL for the Office of Vice Mayor of Laoag City." [1] It was earlier pointed out that both petitioner and private respondent were candidates for Vice Mayor of Laoag City on the January 30, 1980 elections and that, thereafter, the latter "was proclaimed elected to the aforesaid office by the respondent Commission on Elections on February 1, 1980." [2] Accordingly, under the circumstances, this Court, in its resolution of March 4, 1980 required "the parties to state within five (5) days from notice whether or not the case has become moot." [3] In a pleading filed by private respondent on March 25, 1980, he alleged that on the first day of such month, he had taken his oath as Vice Mayor of Laoag City, and since then had performed and discharged the functions of the office as such; enclosing a certificate of the canvass of the votes cast as well as his oath of office. [4] Respondent Solicitor General on behalf of the Commission on Elections, earlier submitted its comment stating "since per information from Executive Director Noli Sagadraca of COMELEC the respondent Manuel B. Santos has already taken his oath of office as Vice Mayor of Laoag City, the instant petition to restrain said respondent from taking such oath has thereby become moot." [5] As could be expected, petitioner was of a different mind. In his comment submitted on March 28, 1980, he pointed out that his prayer to restrain private respondent from taking the oath of office was predicated on his main contention that the disqualification case filed by him to show the ineligibility of private respondent was the decisive issue and should, therefore, be acted upon by respondent Commission on Elections. In that sense, it was his submission that the case could not be considered moot and academic.

With due recognition of the importance of passing upon the question of disqualification based on what was held in *Reyes v. Commission on Elections*, [6] as an innovative and mandatory provision precluding a change of party affiliation within a certain period, this Court, in the light of its ruling in *Aguinaldo v. Commission on Elections*, [7] reiterated in *Laguda v. Commission on Elections*, [8] is of the view that this petition cannot prosper.

1. The relevant excerpt from the *Aguinaldo* decision follows: "Since *Venezuela v. Commission on Elections*, this Court has invariably adhered to the principle that after the holding of the January 30, 1980 election, and a proclamation thereafter made, a petition to disqualify a candidate based on a change of political party affiliation within six months immediately preceding or following an election, filed with this Court after January 30, 1980,

arising from a pre-proclamation controversy, should be dismissed without prejudice to such ground being passed upon in a proper election protest or quo warranto proceeding. Where, however, such constitutional provision had been seasonably invoked prior to that date with the Commission on Elections having acted on it and the matter then elevated to this Court before such election, the issue thus presented should be resolved." [9]

2. There is pertinence likewise to this portion of the Aguinaldo opinion: "It is thus manifest why this certiorari proceeding must be dismissed. The ruling in *Venezuela* was applied in *Villegas v. Commission on Elections*, *Potencion v. Commission on Elections*, *Arcenas v. Commission on Elections*, and *Singco v. Commission on Elections*. [Further citing] *Arcenas*: 'Nor does a decision of this character detract from the binding force of the principle announced in *Reyes v. Comelec*, that the provision on disqualification arising from a change in a political party affiliation by a candidate within six months is both innovative and mandatory. As should be clear, the issue of disqualification has not been rendered moot and academic, only the remedy to be pursued is no longer the pre-proclamation controversy.'" [10] In accordance with previous decisions of this Tribunal, petitioner is granted a period of ten days from receipt of this decision within which he may file either an election protest or an action for quo warranto based on disqualification in the proper court or agency.

WHEREFORE, the petition is dismissed without prejudice, if petitioner is so minded, to his filing, within the period above prescribed, of an election protest or a quo warranto proceeding based on disqualification. No costs.

Teehankee, Barredo, Aquino, Fernandez, Guerrero, De Castro and Melencio-Herrera, JJ., concur.

Makasiar, J., in the result.

Concepcion, Jr., J., took no part.

Abad Santos, J., is on official leave.

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[1] Petition, IV, par. 9.

[2] *Ibid*, III, par. 2.

[3] Resolution of March 4, 1980.

[4] Pleading entitled Matter of Record filed by respondent Manuel B. Santos with Annexes A and B.

[5] Comment of Assistant Solicitor General Ruben E. Agpalo and Solicitor Amado D. Aquino received in the Supreme Court March 18, 1980.

[6] G.R. No. 52699, May 15, 1980.

[7] G.R. No. 53953, January 5, 1981.

[8] G.R. No. 53747, February 20, 1981.

[9] G.R. No. 53953, 2. *Venezuela v. Commission on Elections*, G.R. No. 53532, was decided on July 25, 1980.

[10] *Ibid*, 3. *Villegas v. Commission on Elections*, G.R. No. 52463, was decided on September 4, 1980; *Potencion v. Commission on Elections*, G.R. No. 52527, was decided on September 4, 1980; *Arcenas v. Commission on Elections*, G.R. No. 54039, was decided on November 28, 1980 and *Singco v. Commission on Elections*, G.R. No. 52830, was decided on November 28, 1980.

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