

CONSTANTINO A. NUÑEZ, PETITIONER, VS. HON. ALBERTO V. AVERIA AND EDGARDO H. MORALES, SUBSTITUTED BY RODOLFO DE LEON, RESPONDENTS.*G.R. No. L-38415. June 28, 1974*

Ponente: TEEHANKEE, J.

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The Court sets aside respondent court's questioned order of dismissal of the pending election protest before it on the authority of its recent decision of April 15, 1974 in Cases L-36927-28, L-37715 and L-38831[1] ruling that courts of first instance "should continue and exercise their jurisdiction to hear, try and decide the election protests" filed before them.

Petitioner is the protestant in Election Case No. TM-470 of respondent court contesting the November 8, 1971 election results in certain precincts for the mayoralty of Tarnate, Cavite on the ground of fraud, irregularities and corrupt practices. Original protestee was the proclaimed mayor-elect Edgardo Morales, who was ambushed and killed on February 15, 1974 in a barrio of Tarnate[2] and hence was succeeded by then vice-mayor Rodolfo de Leon who as the incumbent mayor is now substituted in this action as party respondent.[3]

Respondent court had in its questioned order of January 31, 1974 granted protestee's motion for dismissal of the election protest on the ground "that this court has lost its jurisdiction to decide this case for the reason that the same has become moot and academic," citing the President's authority under General Order No. 3 and Article XVII, section 9 of the 1973 Constitution to remove from office all incumbent government officials and employees, whether elective or appointive.

Petitioner filed a timely appeal. Upon receipt of respondent's comment the Court resolved to consider petitioner's petition for review on certiorari as a special civil action and the case submitted for decision for prompt disposition thereof.

The Court in its unanimous joint decision en banc in the above-cited cases of Paredes, Sunga and Valley has already declared such dismissal orders as "clear error," ruling that "(I)t must be emphasized that the 'right' of the private respondents to continue in office indefinitely arose not only by virtue of Section 9 of Art. 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," and that "(I)t is erroneous to conclude that under Section 9, Art. XVII of the New Constitution, the term of office of the private respondents expired, and that they are now holding their respective offices under a new term. We are of the opinion that they hold their respective offices still under the term to which they have been elected, although the same is now indefinite."

The Court further stressed therein that "(T)he 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."

In upholding the continuing jurisdiction of courts of first instance to hear, try and decide election protests, the Court pointed out that "(S)ection 7 of Art. 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," and that it is expressly provided under Article XVII, section 8 of the 1973 Constitution that "'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.' x x x"

ACCORDINGLY, respondent court's dismissal order of January 31, 1974 is hereby set aside and respondent court is directed to immediately continue with the trial and determination of the election protest before it on the merits. In line with previous precedents involving election cases, this decision shall be immediately executory upon promulgation hereof.

SO ORDERED.

Makalintal, C.J., Castro, Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

[1] Entitled "Paredes and Uyan vs. Men Abad, et al.," "Sunga vs. Mosqueda," and "Valley vs. Caro," respectively.

[2] Rollo, pp. 31-34.

[3] Per resolution of May 8, 1974, Rollo, p. 44.

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