

LORENZO LLAMOSO, PETITIONER, VS. VICENTE FERRER AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-2452. August 30, 1949

Ponente: BENGZON, J.

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BENGZON, J.:

In consequence of the elections held November 11, 1947, the municipal board of canvassers of Lumban, Laguna, proclaimed Vicente Ferrer as mayor-elect, with a plurality of 363 votes over the next candidate Lorenzo Llamoso.

Llamoso filed quo warranto proceedings alleging that Ferrer was disqualified for lack of legal residence. After hearing, the court of first instance of Laguna declared the position vacant, stating that Ferrer had not the legal requisites necessary to be validly elected.

Both parties appealed to the Court of Appeals, which in due course, confirmed the ineligibility of Ferrer, but declined to transfer "the palm of victory" to Llamoso who "had not received the popular verdict". It affirmed the decision of the court of first instance.

These two petitions for certiorari to review the judgment of the Court of Appeals refer to the same controversy. On the one hand, Ferrer maintains he was not disqualified; on the other, Llamoso argues that he should be declared elected upon the disqualification of Ferrer.

On the first point, the decision of the Court of Appeals finds that:

"On October 24, 1947, the petitioner Lorenzo Llamoso filed with the Justice of the Peace Court of Santa Cruz, Laguna, a petition for the exclusion of the respondent Vicente Ferrer from the registry list of voters of Precinct No. 6 of the Municipality of Lumban, for alleged lack of six months' residence in the said municipality, as required by section 98 of Republic Act No. 180 (Revised Election Code). The Justice of the Peace denied the petition, and petitioner appealed to the Court of First Instance of Laguna where the appeal was docketed as Civil Case No. 3984, entitled 'Lorenzo Llamoso vs. Board of Inspectors of Lumban, etc.' After hearing, the court rendered on November 4, 1947, a decision reversing the judgment of the justice of the peace and ordering the exclusion of the respondent Vicente Ferrer from the registry list of voters of said Precinct No. 6. The Respondent brought the case to the Supreme Court on certiorari (G. R. No. L-1784), but the high court was able to dispose of the petition only on November 13, 1947, or two days after the election. In its resolution dismissing the petition for certiorari, the high court said that the petition had no merit and the question therein involved had already become moot."

The Court of Appeals held that the judgments above mentioned are conclusive on the lack of qualifications of Ferrer. Invoking our ruling in *Nuval vs. Guray*, 52 Phil., 645, Ferrer says the appellate court committed error. Supposing that the case fits the situation now, and that the judgments were not conclusive, inasmuch as the record does not show the contrary (that in fact he had the required residence), we must confirm the finding that he is and was ineligible. (Sec. 2174, Adm. Code, in connection with sec. 96 of Republic Act No. 180.)

The petition of Llamoso raises this question: When the winning candidate turns out to be disqualified, is the

candidate receiving the next highest number of votes entitled to the office?

The parties have failed to call our attention to a previous decision of this Court squarely on the matter. Ferrer's counsel calls attention to *Topacio vs. Paredes*, 23 Phil., 238, wherein it is said:

"Again, the effect of a decision that a candidate is not entitled to the office because of fraud or irregularities in the election is quite different from that produced by declaring a person ineligible to hold such an office. * * * In the former, we have a contest in the strict sense of the word, because opposing parties are striving for supremacy. If it be found that the successful candidate (according to the board of canvassers) obtained a plurality in an illegal manner, and that another candidate was the real victor, the former must retire in favor of the latter. In the other case, there is not, strictly speaking, a contest, as the wreath of victory cannot be transferred from an ineligible candidate to any other candidate when the sole question is the eligibility of the one receiving a plurality of the legally cast ballots". (*Topacio vs. Paredes*, supra, 254, 255.)

Section 173 of Republic Act No. 180 establishing the procedure when a person who is not eligible is elected to a provincial or municipal office says that any registered candidate may contest his right to the position by quo warranto proceedings. It does not provide that if the contestee is declared ineligible the contestant will be proclaimed. Indeed it may be gathered that the law contemplates no such result, because it permits the filing of the contest by any registered candidate irrespective of whether the latter occupied the next highest place or the lowest in the election returns.

As a matter of fact the American precedents on Elections hold that:

"It is a fundamental idea in all republican form government that no one can be declared elected and no measure can be declared carried, unless he or it receives a majority or a plurality of the legal votes cast in the election. Accordingly, the general rule is that the fact that a plurality or a majority of the votes are cast for an ineligible candidate at a popular election does not entitle the candidate receiving the next highest number of votes to be declared elected. In such case the electors have failed to make a choice and the election is a nullity". (29 *Corpus Juris Secundum*, 353.)

"* * * although the candidate voted for by a majority cannot be declared elected because of his ineligibility and the majority vote is thereby rendered ineffective for such purpose, such majority vote is effective to forbid the election of the candidate having the next highest number of votes. The effect is to render the purported election nugatory and to leave a vacancy in the office thus attempted to be filled". (18 *American Jurisprudence*, 353.)

Wherefore the decision of the Court of Appeals is affirmed. No costs.

Moran, C.J., Ozaeta, Paras, Feria, Padilla, Tuason, Reyes, and Torres, JJ., concur.

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