

RODOLFO Q. PASION, PETITIONER, VS. THE COMMISSION ON ELECTIONS, MAGNO MANIAGO AND MUNICIPAL BOARD OF CANVASSERS OF STA. ANA, PAMPANGA, RESPONDENTS.

G.R. No. L-54151. November 16, 1981

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

In the local elections of January 30, 1980, petitioner and private respondent were the official candidates of the Nacionalista Party and the Kilusang Bagong Lipunan, respectively, for the Office of the Municipal Mayor of Sta. Ana, Pampanga.

In the evening of January 30, 1980, after the voting and counting of votes in the different voting centers, the Municipal Board of Canvassers met for the purpose of canvassing the election returns submitted by the Citizen Election Committees (CECs). There were thirty-one (31) voting centers, but only twenty-eight (28) were canvassed by the Board, as the three (3) remaining returns from the three (3) voting centers of Barangay Sta. Maria had not been submitted. Thus, the Board suspended the canvassing. Later, the CECs from the said three (3) voting centers submitted a certification that "all x x x election paraphernalias, except the ballot boxes and list of registered voters were lost and padlocked (sic)." In short, there were no election returns from the said three (3) voting centers that could be found and included in the canvass. From the result of the canvass of the available election returns from the twenty-eight (28) voting centers, it was shown that private respondent garnered 3,377 votes against petitioner's 2,779 votes or a difference of 598 votes in favor of the former.

On February 1, 1980, petitioner filed a letter-petition with the COMELEC to restrain the proclamation of private respondent alleging that three (3) ballot boxes in three (3) barrios, which are his political bailiwicks, were seized at gunpoint by the followers of private respondent. On the same day, the COMELEC, without notice to private respondent and hearing, issued Resolution No. 8638 which suspended the proclamation of private respondent as Mayor-elect of Sta. Ana, Pampanga, and treated the petition as a pre-proclamation petition. Private respondent filed his answer on February 5, 1980. On February 8, 1980, the COMELEC issued the questioned Resolution No. 8976 dismissing the pre-proclamation petition:

"x x x Considering the answer filed by said private respondent Magno Maniago, showing that said 3 ballot boxes are in the official custody of the Chief of Police of Sta. Ana as trustee of the Election Registrar of Sta. Ana, and considering further that the grounds alleged in said petition are properly grounds for an election protest, the Commission resolved to dismiss, as it hereby dismisses, the said petition for lack of merit, and hereby lifts its restraining order of February 1, 1980, and directs the Municipal Board of Canvassers of Sta. Ana, Pampanga to proceed with and terminate its canvass and proclaim the winners for municipal offices therein immediately.

"Let the Law Department cause the immediate implementation of, and compliance with, the Resolution." [1]

On February 9, 1980, there being no election returns to canvass from the three (3) voting centers of Barangay Sta.

Maria, the Board terminated the canvass and proclaimed, on the basis of the election returns from the twenty-eight (28) voting centers, private respondent as the duly elected Mayor of Sta. Ana, Pampanga.

On February 18, 1980, petitioner filed with the Court of First Instance of Pampanga an election protest docketed as Election Protest No. 4 (5700), alleging therein substantially the same grounds as those alleged by him in the pre-proclamation petition. In due time, private respondent filed his answer to the complaint. However, said election protest was suspended by the court pending the outcome of the election case in the COMELEC.

On February 19, 1980, petitioner filed with the COMELEC a petition dated February 14, 1980 for the annulment of the proclamation of private respondent. The petition was later treated as a motion for the reconsideration of Resolution No. 8976. Private respondent moved to dismiss the petition for the annulment of his proclamation alleging, among others, that he had already taken his oath of office as mayor of Sta. Ana, Pampanga on March 3, 1980 and had immediately assumed office and discharged and continues to discharge the official functions and duties pertaining to that office. After several more pleadings were filed, and the case was heard on March 31, 1980 and April 24, 1980, the COMELEC issued Resolution No. 9802 on May 28, 1980 denying the petition which was earlier treated as motion for reconsideration without prejudice to petitioner's prosecution of his election protest.[2] The said resolution made final and permanent the proclamation of private respondent.

In seeking the annulment of Resolution Nos. 8976 and 9802, petitioner contends that COMELEC acted without or in excess of jurisdiction or with grave abuse of discretion in (1) lifting the restraining order which suspended the proclamation of private respondent; and (2) in denying his motion for reconsideration and in making final and permanent the proclamation of private respondent.

In support of the foregoing, petitioner claims that Resolution No. 8976 was issued without affording him time and opportunity to file a reply to private respondent's answer. What is even worse, according to him was that he was not served with a copy of the Resolution No. 9802, such that he was unable to seek immediate relief from this Court to stop the proclamation of private respondent. Petitioner charges that the proclamation was illegal, alleging that the same was based on incomplete returns. He claims that the edge of 593 votes of private respondent was a result of the substitution of ballots and tampering of election returns in the Municipal Building of Sta. Ana on the night of January 30, 1980.

Private respondent and the Solicitor General raise substantially the same arguments in their comments on the petition. They contend that the COMELEC did not act precipitately in issuing Resolution No. 8976 for it took the COMELEC three (3) days to lift the TRO, unlike in the order suspending the proclamation which was issued without delay and on the very day the letter-petition was filed, and without affording private respondent the opportunity to be heard, contrary to what is provided in Section 175 that a proclamation may be suspended or annulled only after notice and hearing. As regards the missing election returns, they contend that there were no election returns from the questioned three (3) precincts to speak of, since there were no election returns accomplished by the CECs as they had no opportunity to do so, in view of the unfortunate arrival of masked men who were intimidating and threatening people inside the voting centers, causing the people therein, including the CECs members to scamper away.

The petition must be dismissed. It is very apparent from the petition-letter that the grounds relied upon by petitioners in seeking relief from the COMELEC are proper grounds for election protest. Petitioner premised his petition, to quote from Resolution No. 9802 of the COMELEC, on seizure of ballot boxes at gunpoint; intimidation of voters and forced opening and examination of ballots; substitution of ballots; and tampering of election returns. These are the same grounds alleged in the election protest filed in the Court of First Instance of Pampanga. The cases of *Villegas vs. COMELEC*[3] and *Laguda vs. COMELEC*[4] find application in the

disposition of this case. In the early case of *Villegas v. COMELEC*, where massive fraud and violations of certain provisions of the Election Code allegedly committed during the elections were denounced in this Court, the Court through Mr. Chief Justice Enrique M. Fernando dismissed the petition, it appearing therein that the grounds set forth in the complaint before the COMELEC are proper for election protest. The Court pointed out, that at any rate petitioner would not be left without remedy "for the opportunity for him to prove such a wholesale allegation of massive fraud and violations of Election Code is still there." [5] Indeed, herein petitioner could still avail himself of the election protest where he could ventilate his grievance and be provided the full opportunity to present all relevant evidence in a full dress hearing in accordance with due process, unlike in the COMELEC where the proceedings are summary in nature. As was aptly said in *Laguda v. COMELEC*, "to pass on such a complex matter in a summary proceedings would be to run the risk that the decision arrived at would not reflect the realities of this situation."

Moreover, such course of action would be in keeping with the ruling first enunciated in *Venezuela v. COMELEC* [6] and lately in *Arcenas v. COMELEC* [7] that "after an election duly held and a proclamation thereafter made of the winning candidate, a pre-proclamation controversy should no longer be viable."

WHEREFORE, in view of the foregoing, the petition is hereby DISMISSED without pronouncement as to costs.

SO ORDERED.

Fernando, C.J., Barredo, Concepcion, Jr., Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

Teehankee, J., filed a brief concurrence.

Makasiar, J., in the result.

Aquino, J., no part.

Abad Santos, J., dissenting opinion.

[1] p. 49, Rollo.

[2] p. 256, Id.

[3] G.R. No. 52563, September 4, 1980.

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

[5] *Villegas v. COMELEC*, supra.

[6] G.R. No. 53532, July 25, 1980.

[7] G.R. No. 54039, Nov. 28, 1980; see also *Potencion v. COMELEC* G.R. No. 52527, September 4, 1980.

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Concurring opinion

TEEHANKEE, J.:

I concur in the result. The Court's judgment in the case at bar dismissing the petition for prolonging the pre-proclamation controversy when respondent winner had already been duly proclaimed and assumed office and indicating that the loser's remedy is an election protest, expressly cites the ruling first enunciated in *Valenzuela v. Comelec*[1] and lately in *Arcenas v. Comelec*[2] that "after an election duly held and a proclamation thereafter made of the winning candidate, a pre-proclamation controversy should no longer be viable."

What passes my understanding is that the same ruling and doctrine which has since been reaffirmed in numerous decisions like-wise penned by the Chief Justice, the latest of which is that of *Fader-anga v. Comelec*[3], has not been equally applied in the Court's action in two other cases resolved on this same date, namely, *Santos v. Comelec*[4], wherein the Court nevertheless denies reconsideration of its decision ousting the duly proclaimed and incumbent mayor of Taytay, Rizal, petitioner Manuel I. Santos therein; and *Sandalo v. Comelec*[5], wherein the Court sustains the post-election action of the Comelec ousting the duly proclaimed and incumbent mayor of Tubay, Agusan del Norte, petitioner David Sandalo therein, and ordering the canvassing board to proclaim the repudiated losing candidate "as the duly elected mayor." To avoid repetition, I reproduce by reference my separate dissents in said cases.

[1] G.R. No. 53532, July 21, 1980.

[2] G.R. No. 54039, Nov. 28, 1980; see also *Potencion v. Comelec*, G.R. No. 52527, September 4, 1980.

[3] G.R. No. 55938, June 26, 1981.

[4] G. R. No. 52390, March 31, 1981.

[5] G.R. No. 52737.

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