

JUAN D. VICTORIA, PETITIONER, VS. THE COMMISSION ON ELECTIONS AND JESUS JAMES CALISIN, RESPONDENTS.

G.R. No. 109005. January 10, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for certiorari, under Rule 65 of the Revised Rules of Court in relation to Section 2, Article IX of the Constitution, to set aside (a) the Resolution of the Commission on Elections (COMELEC) dated January 22, 1993, which certified respondent James Calisin as the highest ranking member of the Sangguniang Panlalawigan of the Province of Albay and (b) its Resolution dated February 22, 1993, which denied the motion for reconsideration of petitioner.

The issue in the case at bench is the ranking of the members of the Sangguniang Panlalawigan of the Province of Albay for purposes of succession.

In the May 11, 1992 Elections, the following candidates from the first, second and third districts of the Province of Albay were elected and proclaimed as members of the Sangguniang Panlalawigan, to wit:

FIRST DISTRICT

Name

No. of Votes Garnered

1.

Jesus James Calisin

----- 28,335 votes

2.

Vicente Go, Sr.

----- 17,937 votes

3.

Clenio Cabredo

----- 16,705 votes

SECOND DISTRICT

1.

Juan D. Victoria

----- 32,918 votes

2.

Jesus Marcellana

----- 26,030 votes

3.

Lorenzo Reyeg

----- 23,887 votes

THIRD DISTRICT

1.

Ramon Fernandez, Jr.

----- 19,315 votes

2.

Masikap Fontanilla

----- 19,241 votes

3.

Arturo Osia

----- 17,778 votes

4.

Nemesio Baclao

----- 17,545 votes

(Rollo, pp. 27-28)

Due to the suspension of Governor Romeo Salalima of the Province of Albay, Vice-Governor Danilo Azana automatically assumed the powers and functions of the governor, leaving vacant his post as vice-governor. Under the law, Azana's position as vice-governor should be occupied by the highest ranking Sanggunian member, a post being contested by petitioner and private respondent.

In answer to private respondent's petition for his declaration as senior Sanggunian member for the Province of Albay, the COMELEC issued a resolution dated January 22, 1993, certifying him as first in the order of ranking with petitioner herein as second ranking member. The COMELEC based its certification on the number of votes obtained by the Sanggunian members in relation to the number of registered voters in the district.

Thus, on February 15, 1993, Secretary Rafael M. Alunan III of the Department of Interior and Local Government designated private respondent as acting Vice-Governor of the province.

Petitioner filed a motion for reconsideration of the COMELEC resolution which was denied on February 22, 1993.

Hence, this petition.

Petitioner claims that the ranking of the Sanggunian members should not only be based on the number of votes obtained in relation to the total number of registered voters, but also on the number of voters in the district who actually voted therein. He further argues that a district may have a large number of registered voters but only a few actually voted, in which case the winning candidate would register a low percentage of the number of votes obtained. Conversely, a district may have a smaller number of registered voters but may have a big voters' turn-out, in which case the winning candidate would get a higher percentage of the votes. Applying his formula, petitioner would come out to be the highest ranking Sanggunian member.

Petitioner gives the following illustration:

1. for private respondent

$107,216 \text{ (actually voted)} \times 28,335 \text{ (votes obtained)} = 23.40\%$
129,793 (registered voters)

(Rollo, pp. 24,25 and 30)

2. for petitioner

$121,423 \text{ (actually voted)} \times 32,918 \text{ (votes obtained)} = 25.84\%$

154,665 (registered voters)

(Rollo, p. 9)

We are not persuaded.

The Local Government Code provides:

"SEC. 44 - Permanent Vacancies in the Office of the Governor, Vice-Governor, Mayor, and Vice-Mayor. - (a) If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice governor, mayor, or vice-mayor, the highest ranking sanggunian member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the governor, vice-governor, mayor or vice-mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein.

x x x x x x x x

"For purposes of succession as provided in this Chapter, ranking in the sanggunian shall be determined on the basis of the proportion of votes obtained by each winning candidate to the total number of registered voters in each district in the immediately preceding local election" (Underlining ours).

The COMELEC came up with the following ranking of the top three Sanggunian members:

NAME of Elected Candidates

District

Registered Voters

Votes Obtained

Percent Dist'n

Rank

ALBAY

CALISIN, JESUS JAMES B.

1st

130,085

28,335

21.78

1st

VICTORIA, JUAN D.

2nd

155.318

32,918

21.19

2nd

MARCELLANA JESUS, M.

2nd

155.318

26,030

16.76

3rd

(Rollo, p. 14)

The law is clear that the ranking in the Sanggunian shall be determined on the basis of the proportion of the votes obtained by each winning candidate to the total number of registered voters of each district. It does not mention anything about factoring the number of voters who actually voted. In such a case, the Court has no recourse but to merely apply the law. The courts may not speculate as to the probable intent of the legislature apart from the words (*Pascual v. Pascual-Bautista*, 207 SCRA 561 [1992]).

In the case of *Globe-Mackay Cable and Radio Corporation v. National Labor Relations Commission*, 206 SCRA 701 (1992), we held that:

"x x x Under the principles of statutory construction, if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This plain-meaning rule or *verba legis* derived from the maxim, *index animi sermo est* (speech is the index of intention) rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent or will and preclude the court from construing it differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute. *Verba legis non est recedendum*, or from the words of a statute there should be no departure. x x x"

Petitioner's contention is therefore untenable considering the clear mandate of the law, which leaves no room for other interpretation. We are not unmindful of the practicality of petitioner's interpretation but it must very well be addressed to the legislative branch and not to this Court which has no power to change the law.

Considering the foregoing, we find no grave abuse of discretion on the part of the COMELEC in issuing the Resolution dated January 22, 1993.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, Puno, and Vitug, JJ., concur.

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