

ANACLETO LUISON, PROTESTANT AND APPELLANT, VS. FIDEL A. D. GARCIA, PROTESTEE AND APPELLEE.*G. R. No. 10981. April 25, 1958*

Ponente: BAUTISTA ANGELO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-10981/>**BAUTISTA ANGELO, J.:**

In the general elections held on November 8, 1955, Anacleto M. Luison and Fidel A. D. Garcia were the only candidates for mayor of Tubay, Agusan. The certificate of candidacy of Luison was filed by the Nacionalista Party of the locality duly signed by the chairman and secretary respectively, while the certificate of candidacy of Garcia was filed by the local branch of the Liberal Party but it was merely signed by one who was a candidate for vice-mayor. For this reason, the executive secretary of the Nationalists Party impugned the sufficiency of the certificate of candidacy filed in behalf of Garcia, whereupon the Commission on Elections, after making its own investigation, issued Resolution No. 23 declaring Garcia ineligible to run for the Office. Consequently, the Commission on Elections, after making its own investigation, issued Resolution No. 23 declaring Garcia ineligible to run for the Office. Consequently, the Commission on Elections who immediately implemented it by striking out the name of Garcia from the list of registered candidates. Said secretary also relayed the instruction of the Commission on Elections to the board of inspectors of every precinct and the board of canvassers so that they may be guided accordingly and the votes cast for him may not be counted and instead be considered as stray votes.

At this juncture, Garcia filed an action for prohibition with the Court of First Instance of Agusan against the municipal secretary of Tubay praying that an order be issued restraining the latter from invalidating his certificate of candidacy as well as the votes that may be cast for him, which was however dismissed on the ground that said court had no jurisdiction to review the ruling of the Commission on Elections on the matter. No appeal was taken from this order which became final. Meantime, Garcia filed a motion for reconsideration of Resolution No. 23 of the Commission on Elections but the same was denied and no appeal was likewise taken from the ruling of the Commission.

Notwithstanding the adverse ruling of the Commission on Elections, as well as the dismissal of the petition for prohibition sued out by Garcia, the latter continued with his candidacy and the question of his ineligibility became an issue in the campaign. And when the time came for the counting and appreciation of the ballots, the board of inspectors, in spite of the adverse ruling of the Commission on Elections, counted all the votes cast for Garcia as valid and credited him with them in the election returns with the result that he garnered 869 votes as against 675 of his opponent Luison. Consequently, the municipal board of canvassers proclaimed Garcia as the mayor elect of Tubay, Agusan.

Believing that Garcia is ineligible to hold office, Luison filed a petition of quo warranto in the proper court of first instance for the purpose of disputing his ineligibility and securing his consequent ouster from office, but the petition was dismissed for lack of merit on a motion filed by respondent. Luison appealed from the ruling and the case was docketed in the Supreme Court as G. R. No. L-10916. Luison took one step further. He also filed a

protest in the same court on the same ground that Garcia was ineligible because his certificate of candidacy was declared null and void by the Commission on Elections.

After the reception of the evidence, the court found for protestee holding that the certificate of candidacy filed by the latter was in substantial compliance with the law and that the Commission on Elections erred in declaring him legally insufficient. It therefore dismissed the protest with costs against protestant. Hence the present appeal.

The question whether the certificate of candidacy of the protestee is legally sufficient is now moot it appearing that the resolution of the Commission on Elections declaring that said certificate was not prepared in accordance with law has become final for having the protestee failed to appeal from said resolution as required by law. In this connection, it should be noted that while this appeal was pending consideration in this court, the quo warranto case was passed upon wherein this Court held that said resolution is now *res judicata* and is binding upon the protestee (See decision in G. R. No. L-10916, promulgated on May 20, 1957). It cannot therefore be now disputed that protestee is ineligible to hold the office for which he was proclaimed.

The issue now to be determined is whether, the protestee being ineligible and protestant having obtained the next highest number of votes, the latter can be declared entitled to hold the office to be vacated by the former.

Our answer is in the negative. As this Court has held, "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" (*Llamoso vs. Ferrer, et al.*, 84 Phil., 490). In a subsequent case, this Court also said that where the winning candidate has been declared ineligible, the person who obtained second place in the election cannot be declared elected since our law not only does not contain an express provision authorizing such declaration but apparently seems to prohibit it (*Villar vs. Paraiso*, 96 Phil., 658; See also *Nuval vs. Guray*, 52 Phil., 654 and *Topacio vs. Paredes*, 23 Phil., 238).

Moreover, a protest to disqualify a protestee on the ground of ineligibility is different from that a protest based on frauds and irregularities where it may be shown that protestant was the one really elected for having obtained a plurality of the legal votes. In the first case, while the protestee may be ousted the protestant will not be seated; in the second case, the protestant may assume office after protestee is unseated. The first case is brought to court by a petition of quo warranto, while the second by instituting an election protest. Thus, the Supreme Court, in denning these two remedies, said:

"All election disputes may be divided into two distinct classes: (1) those which pertain to the casting and counting of the ballots; and (2) those which pertain to the eligibility of the candidates. If there be cases incapable of being so classified, they have not been suggested.

"* * * If the nature of the evidence upon which the eligibility (qualifications) of a person to hold office must be decided is considered, it will be seen that such evidence has nothing to do with the manner of casting and counting the votes. To what purpose would be the examination of registry lists and ballots by officers appointed and paid for that purpose in determining the eligibility of a successful candidate for office? The eligibility of a person to be elected to a provincial or municipal office depends upon his qualifications as a voter, his residence, his allegiance to the United States, his age, the absence of disqualifications inflicted by the courts by way of punishment, etc. That is, these qualifications and disqualifications do not depend upon the conduct of election inspectors, the illegal trafficking in votes, the method of casting and counting the ballots, or the election returns. The evidence required to establish such qualifications or disqualifications would not aid in any way in determining the questions relating to the manner of casting and counting the ballots. E converso, would the examination of ballots aid in arriving at a decision as to his eligibility. There is nothing in this section to indicate that the court shall receive or consider evidence as to the personal character or

circumstances of candidates.

"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 case the court, after an examination of the ballots may find that some other person than the candidate declared to have received a plurality by the board of canvassers actually received the greater number of votes, in which case the court issues its mandamus to the board of canvassers to correct the returns accordingly; or it may find that the manner of holding the election and the returns are so tainted with fraud or illegality that it cannot be determined who received a plurality of the legally cast ballots. In the latter case, no question as to the correctness of the returns or the manner of casting and counting the ballots is before the deciding power, and generally the only result can be that the election fails entirely. 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 a legal manner, and another candidate was the legal 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. In the one case the question is as to who received a plurality of the legally cast ballots; in the other, the question is confined to the personal character and circumstances of a single individual." (Topacio vs. Paredes, supra.)

Considering the fundamental difference existing between the nature of a petition for quo warranto and that of an election protest, it may be said that a candidate who files a protest against one who has been proclaimed as having received the highest number of votes basing his protest cannot disguise his action so as to make his protest a justification to be seated in office. In other words, he cannot convert an action for quo warranto into an election protest. This is because these two cases are fundamentally different in nature and in purpose. In quo warranto, "there is not, strictly speaking, a contest, and the wreath of victory cannot be transferred from an ineligible candidate to any other candidate", while in a protest, "the question is as to who received a plurality of the legally cast ballots" (Topacio vs. Paredes, supra). The present action, therefore, partakes of the nature of quo warranto and as such has no reason to exist. This question is already involved in the other case (G. R. No. L-10916).

The case of Monsale vs. Nico* (46 Off. Gaz., Supp. No. 11, 211) invoked by protestant is not in point. In that case the candidate who was declared ineligible was not proclaimed because the votes cast for him were declared nullified and the one proclaimed is the candidate who received the next highest number of votes. The trial court found that the protestant was not ineligible because it considered his certificate of candidacy legally sufficient, and when the case was brought to the Supreme Court on appeal the latter merely reversed the ruling of the trial court. In that case there was no direct pronouncement that the one who received the next highest number of votes may be declared seated. This case cannot be invoked as precedent. Wherefore, the decision appealed from is reversed. The Court declares that neither protestee nor protestant has been validly elected and so none is entitled to the position of mayor of Tubay, Agusan. No pronouncement as to costs.

Paras, C. J., Bengzon, Labrador and Endencia, JJ., concur.

Reyes A., J., concurs in the result.

Reyes, J. B. L., J. concurs with both the opinions of Justices Bautista and Concepcion.

*83 Phil., 758.

CONCURRING

CONCEPCION, J.,

The record shows that a majority of the voters in Tubay were not in favor of Anacleto Luison as mayor of said municipality. What is more, despite the disqualification of his opponent, Fidel A. Garcia (owing to a final decision of the Commission on Elections holding that his certificate of candidacy was fatally defective), a substantial majority of the votes cast were for Garcia. This fact leaves no room for doubt that said majority is, or was against Luison. In view of Garcia's aforementioned disqualification, the votes in his favor may be considered as wasted, but only, in the sense that said votes cannot put him in office, but not in so far as they show that Luison does not count with the support of the majority of the electorate and that the same is not passively, but actively and affirmativelymdash;opposed to his becoming the mayor of Tubay. I cannot close my eyes to these facts and say, honestly, that Luison was elected to said office, without feeling that my vote would tend to convert our democratic system into a sheer fiction, instead of an objective reality.

I agree, therefore, with the opinion of Mr. Justice Bautista Angelo to the effect that none of the parties herein has been elected mayor of Tubay.

DISSENTING

MONTEMAYOR, J.:

For a better understanding of the following dissent, it is advisable to state briefly the facts of the case as found and related in the learned majority opinion.

In the general elections of November 8, 1955, for the post of Mayor of Tubay, Agusan, protestant-appellant Anacleto Luison and protestee-appellee Fidel A. D. Garcia were the only candidates. Long before the elections, the certificate of candidacy of Garcia was, after due investigation, found defective and not valid by the Commission on Elections, and it so stated in its Resolution No. 23 of October 11, 1955, declaring him ineligible for the office of Mayor, and ordering that his certificate of candidacy should not be given due course. The Municipal Secretary of Tubay was duly advised of this resolution and he immediately implemented the same by striking out the name of Garcia from the list of registered candidates for Mayor. He also relayed the instructions of the Commission to the Board of Inspectors in Tubay and to the Board of Canvassers, specially the chairman of the same, so that in the counting and canvassing of votes, those cast for Garcia should not be counted and should be considered as stray votes. Garcia moved for a reconsideration of Resolution No. 23, but the Commission on Elections denied his motion and Garcia did not appeal from the ruling of the Commission.

Despite the adverse ruling of the Commission, Garcia went ahead with his candidacy and the question of his ineligibility became an issue in the election campaign, so that the voters were undoubtedly aware of the fact that Garcia was ineligible, according to the ruling of the Commission on Elections. After the voting and despite the instructions given to the Board of Inspectors and to the Board of Canvassers about the ineligibility of Garcia and that votes for him should not be counted, the Board of Inspectors counted the votes for him, amounting to 869 as against 675 for his only opponent, Luison, and the Board of Canvassers, despite the instructions given to it about the ineligibility of Garcia and that consequently, the votes for him should not be counted, considered the 869 votes counted for him by the Board of Inspectors as valid, and proclaimed Garcia Mayor of Tubay.

Luison filed a petition for quo warranto against Garcia in the Court of First Instance to have his ineligibility judicially declared and that he be ousted from the office of Mayor that he had assumed but en motion of Garcia,

the petition was dismissed for lack of merit. Luison appealed from the order of dismissal to the Supreme Court in case G. R. No. L-10916. In due time, this Tribunal decided this case on May 20, 1957, reversing the order of dismissal of the Court of First instance and declaring that the resolution of the Commission on Elections about the ineligibility of Garcia is now *res judicata*, and is binding upon him. In other words, Garcia was ineligible to hold the office of Mayor of Tubay on the basis of the elections of 1955.

In addition to the petition for quo warranto, Luison filed an election protest against Garcia, claiming that inasmuch as the latter was ineligible, the votes cast for him should have been nullified, as declared by the Commission on Elections and as stated to the Board of Inspectors and the Board of Canvassers, to the effect that the votes for him should not be counted. After hearing and the submission of evidence in the lower court, the latter, ignoring and disregarding the ruling of the Commission on Elections about the ineligibility of Garcia, declared Garcia eligible because his certificate of candidacy was in substantial compliance with the law, and the Commission on Elections committed error in declaring Garcia's certificate of candidacy defective and not valid. So, it dismissed the protest, and Luison appealed the order of dismissal to us, which is the present case.

In justice to the lower court, it should be stated that the appealed order of dismissal of the election protest was issued before the promulgation of our decision in the quo warranto case, G. R. No. L-10916, wherein we declared that the ruling of the Commission is now *res judicata*, is binding upon Garcia, and that he was really ineligible.

As the majority opinion correctly states, the issue now to be determined is whether, inasmuch as Garcia is ineligible and therefore, cannot hold the post of Mayor which he had illegally assumed, Luison is entitled to assume and hold that office because he received the next highest number of votes. Citing old decisions of this Tribunal to the effect that when one candidate receiving the highest number of votes in an election is declared ineligible, it does not necessarily mean that the candidate receiving the next highest number of votes should be declared the winner and assume the office vacated by the candidate declared ineligible, the majority holds that Luison is not entitled to the office.

The reason for the aforecited ruling of ours in the past may, in my opinion, be satisfactorily if not easily explained. Those cases wherein that doctrine was laid down were invariably of quo warranto (under the Election Law), the main purpose of which is to declare one who has resumed an elective office, ineligible, and to oust him from it. The petitioner in such a quo warranto case does not necessarily have to state and declare in his petition that he has better right to the office. As to who has a right to said office is another question. Furthermore, in those cases wherein we declared that the candidate receiving the next highest number of votes was not necessarily entitled to be declared elected to the office, the ineligibility of the candidate receiving the highest number of votes was found and declared after the election, not before. In other words, the eligibility or ineligibility of that person receiving the highest number of votes was, before the election, either unknown or uncertain, so that the electorate had a right to say that they voted for him in the honest belief that he was eligible and could be elected to office. And, if after the elections, their winning candidate was subsequently declared ineligible, those voting for him might say that they did not knowingly waste their votes on an ineligible candidate, and that had they known it on time, they would have cast their votes not necessarily for the candidate receiving the next highest number of votes, but on another candidate, which would have radically changed the result of the election because of the overwhelming number of their votes, so that the candidate receiving the next highest number of votes cannot truly say that aside from the candidate who was ineligible, he was the next choice of the electorate.

However, as we already stated, the situation in the present case is quite and radically different. Long before the elections, not only the Board of Inspectors and the Board of Canvassers were duly advised of the ineligibility of Garcia, but the electorate as well, because the ineligibility of Garcia was an issue in the campaign and Luison and his adherents in their electoral meetings and in personal interviews, undoubtedly had advised and tried to persuade

the friends and followers of Garcia not to waste their votes on him, because being officially declared ineligible by the Commission on Elections, he could not be elected anyway. So, those voting for Garcia, knowing all this but insisting in voting for an ineligible candidate, simply wasted their votes. For all legal purposes, they might as well have stayed at home on election day, as far as their candidate Garcia was concerned. Furthermore, and this is important, they cannot well claim and say that they could or would have voted for another candidate for Mayor other than Luison because there was no such other candidate, Luison and Garcia being the only candidates for the office of Mayor. So, those voters for Garcia had no choice. They either had to vote for Luison, if they wanted to exercise their right of suffrage, for the post of Mayor or not vote at all for the post of Mayor. In either case, Luison would have won because he would have received more than his plurality of 675, but not less.

These are the reasons why in our discussion of this case, I said that it was about time that we revised our ruling in the previous cases and laid down a new doctrine, not only more in keeping with the principles of fairness and justice, but also to take into consideration cases wherein the ineligibility of a candidate has been expressly and officially declared before the elections and/or where there are only two candidates to an office, so that under such circumstances, the candidate receiving the next highest number of votes should, even in a quo warranto case, be declared elected and entitled to the office vacated by the one found ineligible. Such new doctrine or ruling would give more incentive and encouragement to registered candidates to initiate quo warranto proceedings to oust from elective post, persons who illegally assume and occupy the same. Otherwise, the filing of a petition for quo warranto in connection with an elective office, would only be based on and motivated by a sense of civic duty, with no reward or advantage to the person filing the same, and the result would be that persons illegally elected to an office and illegally occupying the same would continue to do so, because few persons would take the trouble and shoulder the expense of filing quo warranto proceedings when they stand to receive no benefit or reward from winning the case.

Besides, the law on quo warranto itself, Section 173 of the Revised Election Code, requires that the person contesting the right of a person who is not eligible but is elected to a provincial or municipal office, must be a registered candidate for the same office. That requirement is, to me, significant and may have some purpose, such as the possibility that the contestant or petitioner may have a chance of occupying the office vacated, should he prove that he was entitled to it. Otherwise, why the requirement? A plain citizen or voter interested in good government, and wishing to have no one but an eligible candidate elected to and occupy an elective office in his community could as well be considered as qualified and authorized to file the petition for quo warranto.

"* * *"A proceeding by quo warranto is not strictly speaking an election contest between two persons claiming the same office but determines only that the person holding the office is or is not a usurper; and does not adjudge the rights of any other claimant thereto, although it has been said that since there is a legal remedy for every legal right, where the statute provides no other remedy quo warranto is an appropriate remedy for obtaining the possession of an office to which a person has been legally elected as well as to remove the usurper therefrom; and where by statute the proceeding may be brought upon the relation of the contesting candidate, if the relator succeeds the proper judgment is that defendant be ousted and the relator placed in possession of the office." (20 C. J. 210).

But there is another phase not only important, but to my mind, decisive in the present case. As already stated, Luison filed not only a petition for quo warranto, but also a separate election protest. This protest, like any other election protest, concerns the proper and legal counting of votes. Luison claims, and in my opinion, well and correctly, that inasmuch as the certificate of candidacy of Garcia was declared "not valid and not to be given due course" by the Commission on Elections, which declaration, according to our decision in G. R. No. L-10916, supra, is final and binding upon Garcia, then the effect or result was as though Garcia had never filed any certificate of candidacy. In other words, he was a candidate for the post of Mayor of Tubay, with no valid

certificate of candidacy or no certificate of candidacy at all. As a matter of fact, the Municipal Secretary of Tubay had in compliance with the Resolution of the Commission stricken the name of Garcia from the list of candidates for mayor. Section 149, paragraph 13, of the Revised Election Code provides that "any vote in favor of a person who has not filed a certificate of candidacy, * * * shall be void and counted as stray vote but shall not invalidate the whole ballot". Under this legal provisions, all the votes cast for Garcia should have been declared void, counted as stray votes, by the Board of Inspectors, specially since they had been so advised and instructed by the Municipal Secretary and the Commission on Elections, with the result that Luison would and should have been the only candidate voted for Mayor, receiving 675 votes, and therefore, should have been declared elected. Again, had the Board of Canvassers complied with said instructions and advice of the Commission on Elections and the Municipal Secretary, then said Board of Canvassers should have ignored the votes illegally counted by the Board of Inspectors for Garcia and should have considered only the votes for Luison and declared him (Luison) elected. Just because the Board of Inspectors and the Board of Canvassers openly defied the Commission on Elections and the Municipal Secretary and ignored their instructions and counted the illegal votes for Garcia, and declared him elected, Luison is now being deprived, not to say robbed, of the post of Mayor to which, in my opinion, he is in every respect entitled.

But the majority opinion says that protestant Luison "cannot disguise his action so as to make his protest a justification to be seated in office. In other words, he cannot convert an action for quo warranto into an election protest". I am afraid the majority is laboring under a misapprehension. Luison is not trying to convert an action for quo warranto into an election protest. As the majority opinion itself says, these two cases of election protest and quo warranto are fundamentally different in nature and effect. In the quo warranto case, Luison finally succeeded in having the ineligibility of Garcia judicially declared conclusive and binding upon Garcia. This ineligibility was based on his failure to file and have in his favor a valid certificate of candidacy. In other words, in the general elections of 1955 for the post of Mayor, Garcia was not a registered candidate and had no valid certificate of candidacy. This is now the basis for the present election protest of Luison, namely, that being no candidate according to law and having no certificate of candidacy, his (Garcia's) votes were void, should not have been counted, and should have been considered stray votes under Section 149, paragraph 13:

"Any vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for an office for which he did not present himself, shall be void and counted as stray vote but shall not invalidate the whole ballot."

In order to succeed in his election protest to nullify the votes of Garcia, Luison first had to file a quo warranto case and obtain, as he has obtained, a definite and final ruling by the highest tribunal of the land, that Garcia was not a legal candidate for the post of Mayor and that he did not have a valid certificate of candidacy. To me, it is therefore clear that there is no incompatibility between the two actions of Luison, namely, quo warranto and election protest, for they complement each other, the success of the election protest being based on that of the quo warranto.

The majority opinion says that the case of Monsale vs. Nico (83 Phil., 758), invoked by the protestant is not in point. I beg to differ. I venture to say that it is truly in point and applicable. In that case, there were three candidates for the post of Mayor of Miagao, Iloilo, in the general elections held on November 11, 1947, namely, Monsale, protestant-appellee, Nico, protestee-appellant, and one Fagutao. Monsale, according to the decision, "withdrew his certificate of candidacy on October 10, 1957, but on November 7, he attempted to revive it by withdrawing his withdrawal. The Commission on Elections, however, ruled on November 8 that the protestant could no longer be a candidate in spite of his desire to withdraw his withdrawal." A canvass of the election returns showed that Nico received 2,291 votes; Fagutao, 126 votes; and Monsale, none, because evidently following the ruling of the Commission on Elections to the effect that Monsale was no longer a registered candidate, the Board

of Inspectors did not count the votes for him, which exceeded those for Nico by several hundred. Consequently, Nico was declared elected. Monsale protested the election of Nico and the Court of First Instance of Iloilo, finding his protest well founded, declared him elected Mayor of Miagao. Nico appealed that decision to the Supreme Court, and this Tribunal sustaining the ruling of the Commission on Elections that because of the withdrawal of his certificate of candidacy, the protestant "can no longer be a candidate in spite of his desire to withdraw his withdrawal", reversed the appealed decision, for the reason that Monsale, not having a valid certificate of candidacy in his favor, had no right to contest the election of Nico. The result was that the proclamation of Nico by the Board of Canvassers as Mayor-elect was left undisturbed. Here is a case where a candidate for the post of Mayor, who before the elections, was declared by the Commission on Elections not to be a registered candidate because he had withdrawn his certificate of candidacy, received the highest number of votes, but because the Board of Inspectors, following the ruling of the Commission on Elections, did not count the votes in his favor, the candidate receiving the next highest number of votes was declared elected, and this Court tacitly approved and sanctioned said declaration or: proclamation by not disturbing it. But if the ruling laid down in the cases cited in support of the majority opinion had been followed, then this Court should have held the proclamation of Nico as Mayor-elect to be erroneous and invalid, and declared that there was failure to elect, which this Tribunal, wisely, did not do.

To me, the case for Luison in the instant case is stronger, because he was the only other candidate, whereas in the case of Monsale vs. Nico, there was a third candidate, and the electors who voted for Monsale could yet have said or claimed that had they known that their candidate Monsale was not a registered candidate, they would have voted for the third candidate, Fagutao, and. could have made him win over Nico, a thing which the voters of Garcia in the present case could not claim for the reason that there was no other candidate to vote for except Luison.

There is one other aspect of the present case which although not important perhaps, still may merit consideration. Under the majority opinion, reversing the appealed decision and at the same time dismissing the protest, the result is that there was failure to elect, and consequently, a new election will have to be conducted for the post of Mayor. It will be noticed, however, that the unexpired. term for the post up to the next elections in 1959 is: relatively short, a matter of one year and eight months, which by the time this decision shall have become final, would still be shorter. I doubt the wisdom and practicability of holding a special election to determine who will occupy the post of Mayor for so short a period. Aside from the consequent evils and inconveniences occasioned by an election, such as, reviving old and forgotten rivalries and stirring up antagonism, ill feeling, and enmities in the community, it is doubtful whether worthy candidates for the office could be found willing to undertake an election campaign with all the unavoidable trouble and expense, and with all the uncertainty of the result, fight to the bitter end for a post which cannot last very long.

In conclusion, I hold, first, that even considering the ruling laid down by this Court in the past, that in quo warranto proceedings (election cases), although the candidate receiving the highest number of votes is declared ineligible, the candidate receiving the next highest number of votes may not be declared elected, nevertheless where the ineligibility of the first candidate was known to the electorate before the elections and/or there were only two candidates for the office, then the candidate receiving the next highest number of votes could and should even in a quo warranto case, be declared elected to the office; second, that in an election protest case, where the ineligibility of a candidate receiving the highest number of votes has been definitely and finally declared not only by the Commission on Elections, but by the courts as well, on the ground that he failed to file a valid certificate of candidacy and was, therefore, not a legal candidate for the post, then all the votes cast for him should not have been counted, but should have been considered void and regarded as stray votes.

The election protest of Luison goes to and centers upon this illegal counting of the votes for Garcia, and having succeeded, in my opinion, in establishing the error and illegality of the action of the Board of Inspectors and the Board of Canvassers in counting and considering those votes for Garcia, this Court should direct those two electoral bodies to correct their returns and their canvass, with the result that Luison, having not only received the next highest number of votes, but being the only remaining candidate for the post, should be declared elected to the post of Mayor of Tubay.

DISSENTING

FELIX, J.,

I concur in the dissenting opinion of Mr. Justice Marceliano Montemayor. I desire, however, to state the following:

It appears from the records that two cases have been instituted in the Court of First Instance of Agusan: one G. R. No. L-10916—was a petition for quo warranto for the purpose of securing a declaration of ineligibility of Fidel A. D. Garcia as Mayor of Tubay, Agusan, and his consequent ouster from office, and the other G. R. No. L-10981 an election protest by the same petitioner, as protestant, against the same respondent Fidel A. D. Garcia, as protestee. The first case was already decided by this Court declaring the ineligibility of respondent Garcia who naturally had to cease holding the position of Mayor of Tubay, Agusan. Because of the provisions of law and the jurisprudence on the matter, Anacleto Luison could not in that case, succeed Garcia in that post.

In the present case, G. R. No. L-10981, wherein We decide the election protest, the majority basing its decision on the result of the previous quo warranto case, renders judgment dismissing the protest and by the same stroke of the pen prevents the protestant Anacleto Luison from succeeding Fidel A. D. Garcia in the position of Mayor of Tubay, Agusan, notwithstanding the fact that he was the only other candidate voted for that office in the general elections of November 8, 1955.

I dissent from the majority decision because there is absolutely no reason to disregard the votes cast in favor of Anacleto Luison which were the only valid votes east for Mayor in said elections. Under the circumstances and facts appearing on record and the law applicable thereto, the votes cast in favor of Fidel A. D. Garcia have to be considered as stray votes.

In view of the theory of the majority and taking into account the short period of incumbency that remains for a new mayor of Tubay, Agusan, there will be with all probability no new special election for Mayor of Tubay and as our decision in the quo warranto case has already become final, there is nothing to prevent the President of the Philippines from appointing Fidel A. D. Garcia to continue holding the office of mayor of said municipality for the rest of the period, thus nullifying our findings and conclusions in the quo warranto case and leaving the sound principles of democracy somewhat worsted. I, therefore, vote against the dismissal of this case and for the declaration that protestant-appellant Anacleto Luison has been duly elected to the position of Mayor of Tubay, Agusan, in the general elections of November 8, 1955.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.