

PEDRO S. ALIALY, ET AL., PETITIONERS, VS. COMMISSION ON ELECTIONS, RESPONDENT.

G.R. No. 16165. July 31, 1961

Ponente: PAREDES, J.

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PAREDES, J.:

This is a petition for Certiorari and Mandamus, with Writ of Preliminary Mandatory Injunction filed on November 2, 1959, by Pedro S. Alialy, Jose Cayetano, Fortunato Vidal, Breccio Bautista, Casiano Malitao, Patricio Herrera, and the Nacionalista Party (Local Chapter, Victoria, Oriental Mindoro), against the Commission on Elections.

On September 1, 1959, a collective certificate of candidacy for the November 10, 1959 elections for the petitioners as councilors, Fe B. Marquez as Mayor and Timoteo Ocampo, as Vice Mayor, signed and sworn to by Fe B. Marquez, in her capacity as Chairman of the Local Chapter of the Nacionalista Party in the town of Victoria, Oriental Mindoro, was filed with the respondent Commission on Elections (Annex A). On October 14, 1959, the Commission ruled:

"* * *. It appearing that this certificate of candidacy is subscribed under oath only by the chairman and not by the secretary also of the party, and, therefore, is not prepared in compliance with Section 35 of the Revised Election Code, the Commission, as recommended by the Law Division, RESOLVED not to give due course to the said certificate of candidacy in favor of its candidates for local offices aforementioned.

However, it appearing that Fe B. Marquez is a candidate for mayor in the ticket and considering that her signature and oath appear in the certificate of candidacy is considered valid only insofar as the candidacy of Fe B. Marquez for mayor is concerned. * * *."

Petitioners, on October 27, 1959, presented a motion for reconsideration, stating that the omission of the signature called for, amounts merely to an inconsequential deviation, not sufficient to invalidate the certificate of candidacy of petitioners, since the said omission cannot influence, by itself, the result of the election in the place.

On October 29, 1959, a supplement to the Motion for Reconsideration was filed, alleging that the local Chapter of the Nacionalista Party of Victoria, had filed an amended certificate of candidacy (Annex D), dated October 26, 1959, which confirmed the genuineness and purpose of the original certificate of candidacy and bore already the signatures of the Chairman and Secretary of the chapter. On October 30, 1959, petitioners counsel was advised that the motion for reconsideration was denied.

Because of the proximity of the elections, the petitioners filed with this Court on November 2, 1959, the present action, contending that the respondent Commission, in not giving due course to their collective certificate of candidacy filed by the party, acted without or in excess of jurisdiction, or with grave abuse of discretion and unlawfully excluded the herein petitioners from the enjoyment of the right to be candidates.

Petitioners also prayed for the issuance, ex-parte, of a preliminary mandatory injunction, claiming that the

enforcement of the Commissioner's resolution will cause irreparable injury, for then the Nacionalista Party would have no candidates for such office in said town and that the votes cast in their favor will not be counted and that respondent Commission be restrained from enforcing its Resolution of October 14, 1959.

On November 4, 1959, after posting a P200.00 bond, a Writ of Preliminary Mandatory Injunction was issued, ordering the respondent to give due course to the certificate of candidacy of petitioners and to count the votes cast in their favor.

Respondent answered and argued that the certificate in question failed to comply with the requirements of section 35 of the Election Law; that the absence of the signature of the Secretary of the political party, was a fatal defect; that the amended certificate of candidacy was presented on October 29, 1959, long after the expiration of the deadline for filing certificates of candidacies, which was September 11, 1959, and that since the original certificate of candidacy was not valid, there was nothing to confirm or amend.

Section 35 of the Election Law provides:

"Certificates of candidacy of candidates may be filed by a political party nominating them without the signature or oath of said candidates.

Any political party having officially nominated candidates shall file with the Commission on Elections a certificate of such official nominations subscribed under oath by the president and secretary or corresponding officers of such political group or party. * * *."

The absence of the signature of the Secretary of the Local chapter N. P. in the original certificate of candidacy, presented before the deadline, September 11, 1959, did not render the certificate invalid. The amendment of the certificate, although at a date after the deadline, but before the election, was a substantial compliance with the law, and the defect was cured. It must be recalled that the respondent Commission acted on the original certificate in question, only on October 14, 1959, long after the deadline. The requirement to file a certificate of candidacy is to make known to the respondent Commission that the person therein mentioned has been nominated by a duly authorized political agrupation empowered to act and that it reflects accurately the sentiment of the nominating body; that the candidate is a resident of the municipality; that he is eligible for the office to which he wanted to be elected; and that he belongs to a party. No one has impugned the genuineness of the certificate of candidacy in question. Officers of the party who are called upon to certify, affirmed and confirmed the truthfulness of the original certificate of candidacy. The respondent commission ruled that the requirements of section 35 aforequoted, are mandatory upon those who wish to claim the exercise of the privilege of being candidate, and failure of the party secretary to sign the original certificate was not a mere inconsequential deviation, but it rendered the same null and void. Considering, however, the facts obtaining in this particular case, as heretofore recited, the respondent Commission has sacrificed substance to form. In cases similar to the one under consideration, a directory construction of the law was adopted. It is said that "when the Election Law does not provide that a departure from a prescribed form will be fatal and such departure has been due to an honest mistake or misinterpretation of the Election Law on the part of him who was obligated to observe it, and such departure has not been used as a means for fraudulent practices * * * the law will be held directory and such departure will be considered a harmless irregularity" (*Gardiner vs. Romulo*, 26 Phil., 521, cited in *De Guzman vs. Bd. of Canvassers of La Union and Lucero*, 48 Phil., 211, 214-215). For inconsequential deviations which can not effect the result of the election, or deviations from provisions intended primarily to secure timely and orderly conduct of elections, a directory construction is generally applied (III *Sutherland Stat. Const.* 3rd Ed. Sec., 5820 pp. 113-114-Cases cited therein). The same ruling is given on acts not calculated to affect the integrity of the elections (*Hunt vs. Mann* 136 Miss. 590). The omission in the certificate in question did not at all affect the integrity of the elections in the town of Victoria. It had occasioned injury to no one. In the recent and identical

case of *Canceran, et al., vs. The Commission on Elections*, (107 Phil., 607) We said:

"* * * Moreover, the timely filing of the motion for reconsideration (Annex D) by petitioners on October 15, 1959 has, in effect, cured the said defect of the certificate, inasmuch as it includes as petitioners or movants, the chairman and secretary of the Nacionalista Party in Cauayan, Isabela, the very officials required by the statute to sign said certificate. In the case of *Gabaldon vs. Commission on Election*, (99 Phil., 898), this Court, in effect, has held that when the original defects of a certificate of candidacy are cured by the allegations of a motion for reconsideration filed in due time (that is, before the election) with the Commission on Elections, there is substantial compliance with the statutory requirement of Section 35." (*Italics Supplied*)

Petitioner Pedro S. Alialy in that election, was elected councilor of the town (Exhibit F). If a substantial compliance with section 35 of the Election Law shall give way to a mere technicality, the will of the electorate in said town, as far as petitioner Alialy is concerned, would be frustrated (*De Guzman vs. Bd. of Canvassers of La Union and Lucero*, supra; *Cecilio vs. Belmonte*, 51 Phil., 540).

In view hereof, the resolution of respondent Commission dated October 14, 1959 is reversed, the petition is granted and the writ of preliminary mandatory injunction heretofore issued, is hereby made permanent and definitive. No costs.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Dizon, De Leon, and Natividad, JJ., concur.

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