

GREGORIO V. GAERLAN, JR., PETITIONER AND APPELLEE, VS. LUIS C. CATUBIG, RESPONDENT AND APPELLANT.

G. R. No. 23964. June 01, 1966

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Registered candidates for councilors, amongst others, in the eight-seat City Council of Dagupan City - in the 1963 elections - were petitioner Gregorio V. Gaerlan, Jr. and respondent Luis C. Catubig. Having obtained the third highest number of votes, the City Board of Canvassers, on December 2, 1963, proclaimed respondent Catubig one of the elected 8 councilors. Petitioner Gaerlan, on the other hand, lost his bid.

Seasonably, [1] petitioner went to Court on quo warranto to challenge respondent's eligibility [2] for the office, on the averment of non-age. The judgment below gave the nod to petitioner and held respondent ineligible to hold the office of councilor of Dagupan City, excluded him therefrom, and declared vacant the seat he occupies in the City Board. Respondent appealed.

There is no quarrel as to the facts. Respondent Gatubig was born in Dagupan City on May 19, 1939^f At the time he presented his certificate of candidacy on September 10, 1963, he was 24 years, 3 months and 22 days; on election day, November 12, 1963, he was 24 years, 5 months and 24 days; and at the time he took his oath of office as councilor on January 1, 1964,[3] he was 24 years, 7 months and 13 days. Whether respondent's age be reckoned as of the date of the filing of his certificate of candidacy, or the date of election,[4] or the date set by law for the assumption of office - the result is the same. Whichever date is adopted, still, respondent was below 25 years of age.

With the foregoing backdrop, respondent calls upon us to resolve two questions; Firstt has petitioner a cause of action against respondent? Second. in the affirmative, is respondent eligible to the office of councilor of Dagupan City?

- The thrust of respondent's argument is simply this: Petitioner Gaerlan, Jr. placed 16th out of the 16 candidates. Gaerlan thus has no right to the office, either by election or otherwise; and said petitioner cannot validly question respondent's right to sit.

This case calls into question the applicability of Section 173 of the Revised Election Code[5] which, in part, reads:

"Procedure against an ineligible person. - When a person who is not eligible is elected to a provincial or municipal office, his right to the office may be contested by any registered candidate for the same office before the Court of First Instance of the province, within one week after the proclamation of his election, by filing a petition for quo warrant.^{***}"

The language of this statute is very plain. The right of a non-eligible person elected to a municipal office may be contested by any registered candidate for the same office. Petitioner perfectly fits into this legal precept. He was a

registered candidate for the same office. It matters not that he has no claim or right to the office of councilor in the event respondent be ousted. Because the clear-cut language - "any registered candidate for the same office" - does not require that said candidate could, if his quo warranto case prospers, himself occupy that office. Right here, we find a forbidding obstacle to any other view of the statute. To say otherwise would empty this legal provision of its obvious contents. *Sanchez vs. del Rosario*, *supra* is to be read as controlling in the presents. There, as here, the office involved was that of Councilor, the statute under consideration the same Section 173, Revised Election Code. And again, there as here, petitioner would not sit if the action be successful. This Court there expressly ruled:

"That petitioner would not be entitled to the elective office even if respondent is ordered to vacate the same is likewise an invalid objection against the institution of this suit, for otherwise, Section 173 of the Revised Election Code would clearly be rendered nugatory. Under said law, the contestant's right to the office involved is not contemplated, and thus this Court has repeatedly ruled that respondent's declaration of ineligibility does not entitle the petitioner to said office (*Luison vs. Garcia*, G. R. No. L-10981, April 25, 1958; *Llamoso vs. Ferrer*, 47 Off. Gaz., No. 2, 727; *Calano vs. Cruz*, G. R. No. L-6404, January 12, 1954). Yet, in said rulings, the petitioners have never been considered to be without any legal personality to file the necessary quo warranto proceedings. We need not conjecture into the philosophy of the law; suffice it to say that the legislature expressed its intentions very plainly."

But respondent would want us to apply Section 6 of Rule 66 of the Revised Rules of Court, as follows:

"SEC. 6. When an individual may commence such an action. - A person claiming to be entitled to a public office or position usurped or unlawfully held or exercised by another may bring an action therefor in his own name."

Section 6 just quoted is out of focus. Petitioner here is not "claiming to be entitled" to the office of councilor. Besides, we are unprepared to scuttle the jurisprudence heretofore cited - which is so well buttressed upon law and reason. Moreover, distinction should be drawn between quo warranto referring to an office filled by election and quo warranto involving an office held by appointment, thus -

"*** In quo warranto proceedings referring to offices filled by election, what is to be determined is the eligibility of the candidate elect, while in quo warranto proceedings referring to offices filled by appointment, what is determined is the legality of the appointment. In the first case when the person elected is ineligible, the court cannot declare that the candidate occupying the second place has been elected, even if he were eligible, since the law only authorizes a declaration of election in favor of the person who has obtained a plurality of votes, and has presented his certificate of candidacy. In the second case, the court determines who has been legally appointed and can and ought to declare who is entitled to occupy the office."[6]

The foregoing, once again, emphasizes the rule that in quo warranto proceedings referring to offices filled by election, the only issue is the eligibility of the candidate elected. In such a posture, it is beyond debate that the applicable statute here is Section 173 of the Revised Election Code, the specific law on the subject.

And, petitioner's standing in court is confirmed.

- Respondent presses the claim that the question of age-eligibility should be governed by the provisions of Republic Act 170[7] and not by Republic Act 2259.[8] For ready reference, we present in parallel columns the two conflicting legal provisions - on the left side, Section 12, Republic Act No. 170, as amended, and on the right, Section 6, Republic Act 2259.

"SEC. 12. *** The elective members of the Municipal Board shall be qualified electors of the city, residents therein for at least one year, and not less than twenty-three years of age. ***"

"SEC. 6. No person shall be a City Mayor, Vice-Mayor, or Councilor unless he is at least twenty-five years of age, resident of the city for at least one year prior to his election and is a qualified voter."

Pertinent here it is to state that Republic Act No. 484 amending, inter alia. Section 12 of the Dagupan City Charter, took effect on June 10, 1950; whereas, Republic Act No. 2259 became law on June 19, 1959 - nine years later. The problem, cast in legal setting, is whether or not Section 12 should give way to Section 6. On this point the following reproduced in haec verba from *Libarnes vs. Executive Secretary, et al.*, L-21505, October 24, 1963, is an authoritative expositor of the law, viz:

"Again, the question whether or not a special law has been repealed or amended by one or more subsequent general laws is dependent mainly upon the intent of Congress in enacting the latter. The discussions on the floor of Congress in enacting the that its members intended to amend or repeal all provisions of special laws inconsistent with the provisions of Republic Act No. 2259, except those which are expressly excluded from the operation thereof. In fact, the explanatory note to Senate Bill No. 2, which, upon approval, became Republic Act No. 2259, specifically mentions Zamboanga City, among others that had been considered by the authors of the bill in drafting the same. Similarly, Section 1 of Republic Act No. 2259 makes reference to 'all chartered cities in the Philippines', whereas Section 8 excludes from the operation of the Act the cities of Manila, Cavite, Trece Martires and Tagaytay', and Section 4 contains a proviso exclusively for the City of Baguio, thus showing clearly that all cities not particularly excepted from the provisions of said Act - including, therefore, the City of Zamboanga - are subject thereto." [9]

The only reference to Dagupan City in Republic Act 2259 is found in Section 2 thereof whereunder voters in said city, and in the City of Iloilo, are expressly precluded to vote for provincial officials. Therefore, by the terms of the *Libarnes* decision, the age-limit provision in the last-named statute (Republic Act 2259) is controlling.

Indeed, we find no warrant in logic to go along with respondent. Adverting to *Libarna*, supra, Act 2259 (Section 8) excludes from the operation thereof a number of cities. Dagupan City is not one of them. We are not to enter into the impermissible field of injecting into a statute a provision plainly omitted therefrom. And until Congress decrees otherwise, we are not to tamper with the present statutory set-up. Rather, we should go by what the legislative body has expressly ordained. And, this position we take here is accentuated by the fact that by Section 9 of Act 2259,

"All Acts or parts of Acts, Executive Orders, rules and regulations inconsistent with the provisions of this Act, are hereby repealed."

Given the fact that Dagupan City beyond peradventure is removed from the exceptions, it stands to reason itself that its charter provision on the age limit is thereby repealed. And this, because "the last statute is so broad in its terms and so clear and explicit in its words so as to show that it was intended to cover the whole subject, and therefore to displace the prior statute". [10]

Specifically with reference to the uniform age limit of 25 years set forth in Section 6 of Republic Act 2259, we take stock of the phraseology employed. This section starts with "No person shall be *** Councilor unless he is at least twenty-five years of age". This specific language gives us added reason to believe that in reality - and for the sake of uniformity - the 23-year age limit in the Dagupan City Charter must have to yield. Because in the legislative scheme, councilors are conferred the right to succeed the City Mayor in the event the Vice-Mayor is unavailable. [11] The City Mayor must at least be 25 years of age. [12] So it is, that in the event a councilor 23 years of age is elected and before 25 years catapulted to the position of mayor, then we have the anomalous situation where the person succeeding as mayor will be less than 25 years. Such a situation, it seems to us, is not contemplated by the law.

With the foregoing guideposts, we are unable to subscribe to the view that respondent's age qualification should

be governed by the provisions of the Dagupan City Charter. We, accordingly, hold that respondent is disqualified on the ground of non-age: Because at the time he filed his certificate of candidacy, at the time of the election, and at the time he took his oath of office, he was below the age of 25 years.

Upon the law and the facts, we vote to affirm the appealed judgment. No costs allowed.

SO ORDERED

Bengzon, C.J., Concepcion, Reyes, Barrera, Dizon, Regala, Makalintal, Bengzon, Zaldivar, and Sanchez, JJ., concur.

[1] Section 173, Revised Election Code, provides that eligibility may be contested within one week after the proclamation of election.

[2] Eligibility includes "the attainment of the age required by law". *Feliciano vs. Aquino*, L-10201, September 23, 1957.

[3] Sec. 2, par. 2, Republic Act 2259, provides that "the newly elected city officials shall assume office on the first day of January following their elections, ***"

[4] In *Feliciano vs. Aquino*, supra, this Court interpreting Section 12 of Act 1582 which, in part, reads: "An elective municipal officer must have been, at the time of the election, a qualified voter and resident in the municipality for at least one year, owing allegiance to the United States; he must be not less than twenty-three years of age, ***", held that "a candidate for an elective municipal office must teive, in order to be eligible, at least twenty three years of age at the time the election is held, ***" The same result was reached in *Sanchez vs. del Rosario*, L-1687S, April 26, 1961, where this Court was called upon to interpret a similar provision (Section 2174 of the Administrative Code), which reads: "An elective municipal officer must, at the time of the election, be a qualified voter in his municipality and must have been resident therein for at least one year, and must not be less than twenty-three years of age, ***"

[5] Section 2 of the Revised Election Code provides that elections to public office are governed by said Code.

[6] Ruling on the Motion for Reconsideration in *Nuval vs. Guray*, 52 Phil. 6/t5, 654; emphasis supplied.

[7] The Charter of the City of Dagupan, as amended by Republic Act 484.

[8] Entitled "An Act making elective the offices of Mayor, Vice-Mayor and Councilors in Chartered Cities, regulating the election in such Cities and fixing the salaries and tenure of such offices."

[9] Italic supplied.

[10] *Lichauco & Co. vs. Apostol, et al.*, 44 Phil. 138 147, citing *Frost vs. Wenie*, 157 U.S., 46; 39 L. ed., 614, 619.

[11] Section 7 of Republic Act No. 2264, otherwise known as the Local Autonomy Act, and Section 3 (2nd par.) of Republic Act 2259.

[12] Section 6, Republic Act 2259.

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