

WENCESLAO Q. VINZONS, IN HIS CAPACITY AS PRESIDENT OF YOUNG PHILIPPINES, INC., PETITIONER VS. COMMISSION ON ELECTIONS; JUAN SUMULONG, IN HIS CAPACITY AS PRESIDENT OF POPULAR FRO...

G.R. No. 48596. October 01, 1941

Ponente: MORAN, J.

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MORAN, J.:

This is a petition for certiorari filed by the Young Philippines, Inc., against the Commission on Elections, the Popular Front headed by Sumulong, the Popular Front headed by Abad Santos, and the Democrata Nacional, praying for the review of the ruling issued by the Commission on Elections on the matter of the appointment of the second inspector in the different precincts of the North District of Manila.

The pertinent facts are as follows: In the elections of November 8, 1938, Gregorio Perfecto and Engracio Clemeña, opposing candidates for the office of representative for the North District of Manila, polled 14,442 and 12,365 votes, respectively. Perfecto was then the official candidate of the Nacionalista Party and Clemeña, according to his certificate of candidacy, the official candidate of the "Alliance of Frente Popular, Young Philippines and Bloque Popular." This alliance, however, is no longer existing, the component parties having thereafter separated. Now there are four distinct and independent minority parties—the Young Philippines, the Frente Popular headed by Sumulong, the Frente Popular headed by Abad Santos, and the Democrata Nacional which did not participate in the 1938 elections. Each of these parties, except the Democrata Nacional, claims the right to propose the second inspector in the forthcoming elections to the exclusion of the others; but the Commission on Elections ruled that the minority inspectors in the various precincts in the North District of Manila should be apportioned equally among the aforementioned four minority parties. This ruling is the subject of review in the present petition for certiorari.

Section 5 of Commonwealth Act No. 657 reads:

"Fifty days immediately prior to the date of a regular election, the Commission on Elections shall, directly or through its authorized provincial representatives, appoint a board of election inspectors for each election precinct, to be composed of three inspectors and a poll clerk, who shall hold office until their successors are appointed for the next regular election, unless they are sooner relieved.

"The appointment of one inspector and his substitute and the poll clerk and his substitute shall be proposed by the party which polled the largest number of votes at the preceding election as hereinbelow specified, and one inspector and his substitute shall be proposed by the party which polled the next largest number of votes, if the same constitute at least ten per centum of the total number of votes cast in the said election. If the board of election inspectors to be appointed is for a regular election of national officials, only the votes obtained by candidates for national offices in the last election for said offices in the legislative district shall be counted, and if the board of election inspectors is to be appointed for a regular election of local officials, only the votes obtained

by provincial and municipal candidates in the last election for local offices in the respective city or municipality shall be counted. The third inspector and his substitute shall be chosen by the Commission on Elections, and said third inspector shall be the chairman of the board.

"The national directorates of political parties shall appoint their respective representatives in each legislative district, who shall submit in writing, at least ten days before the date fixed for the appointment of the board of election inspectors, the names and addresses of the persons whom they propose to be appointed as election inspectors. If said representatives shall fail to propose the names of persons to be appointed as election inspectors or no political party is entitled to propose the appointment of either inspectors or poll clerks, the Commission shall, at its discretion, choose said inspectors or poll clerks and their substitutes."

Under this provision, the original alliance formed by the aggroupment of Frente Popular, Young Philippines and Bloque Popular, having polled the second largest number of votes in the preceding (1938) elections and which votes constitute more than ten per centum of the total cast therein, would be entitled to propose the appointment of the second election inspector. But as this alliance no longer exists, the right conferred by law thereto to propose the second election inspector cannot now be claimed by any of the component parties, the reason being that the votes thus received were accorded by the people to the aggroupment formed, consequent upon the entente cordiale or *modus vivendi*, and no succession to any political right may be claimed by the component parties who have thereafter separated. (*Sumulong vs. Commission on Elections et al.*, 40 Of. Gaz. 9th Sup. (No. 13), pp. 216, 230-231.)

As none, therefore, of the four minority parties is entitled, as of right, to propose the appointment of the second inspector and his substitute, the Commission on Elections may choose the same, in the exercise of the discretion conferred upon it by the provision of the last sentence of the third paragraph of section 5, Commonwealth Act No. 657, *supra*. The order of the Commission on Elections apportioning the minority inspectors equally among the four minority parties is, therefore, in accordance with law. Since the Commission, in cases of this character, is vested with the discretion to choose the second inspector, it may exercise such discretion in the manner it deems appropriate, uncontrolled by any fixed rule of procedure. Thus, the Commission guided solely by the knowledge of its own or derived from its records may, in the exercise of its right to choose, appoint a qualified person without the assistance of any of the parties, or it may inquire formally or informally from the parties themselves or from any other entity or person, or it may authorize the minority parties or any of them or any faction to propose the person or persons to be appointed, or it may designate a neutral or non-partisan person. The purpose of giving the Commission a broad discretion on the matter is to enable it to select such person as may aid it in the performance of one of its most important functions—to insure a free, orderly and clean election. And this Court will not disturb the exercise of such discretion except in cases of grave abuse thereof. In the instant case, no such abuse of discretion is shown.

The Young Philippines contends, however, that the aggroupment of the Frente Popular, Young Philippines and Bloque Popular was not a coalition but a mere *convenio* to support the candidacy of Engracio Clemeña, as each of them maintained their respective individualities and platforms. In other words, there has been no fusion of the three parties; but their joining together for the common, although limited, purpose of supporting a candidate in an election, is a coalition in law.

Finally, the Young Philippines argues that the Frente Popular headed by Sumulong and the Frente Popular headed by Abad Santos are not entitled to succeed to the right of the Frente Popular which participated in the 1938 elections. This theory, assuming it to be tenable, cannot entitle the Young Philippines to the right of minority representation in the board of election inspectors. A minority party claiming minority representation must rely upon the force of its own right, and not upon the weakness or nonexistence of the right invoked by the other

minority parties.

And this applies with equal force to like claims advanced by the Frente Popular headed by Sumulong and the Frente Popular headed by Abad Santos, neither of which has shown a right to claim the votes polled by the alliance in 1938.

The order of the Commission is affirmed, with costs against the petitioner, and the cross-petition filed by the Frente Popular headed by Sumulong on*the matter of the appointment of minority inspectors in congressional districts other than the North District of Manila is hereby dismissed, without prejudice to the filing of a separate proceeding to the same effect.

Avanceña, C. J., Diaz and Horrilleno, JJ., concur.

Ozaeta, J., dissenting:

I dissent. The Commission and this Court found that none of the minority parties polled at least 10 per cent of the total number of votes cast in the last national election and hence none is entitled to propose the second inspector. The law provides that in such a case the Commission shall at its discretion choose said inspector. This means, in my opinion, that the Commission should make its own choice and should not in any way be influenced by that of any political party or faction. When the Commission allows each of the different minority parties to propose election inspectors notwithstanding that under the law they are not entitled to do so, it disregards the law and abdicates the authority and discretion in it vested by law to chose said inspectors.

I believe that the second inspector to be chosen by the Commission on Elections in case no minority party is entitled thereto, should be nonpartisan like the third inspector that the Commission is required to choose in every case. I base this belief on section 6 of Commonwealth Act No. 657, which provides that "no inspector chosen by the Commission on Elections shall engage directly or indirectly in partisan political activities or take part in any election except in the discharge of his duties as such and except to vote."

Order affirmed.

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