

ANTONIO RIMANDO, PETITIONER, VS. COMMISSION ON ELECTIONS AND VIRGINIA OTEYZA, RESPONDENTS.

G.R. No. 48603. October 01, 1941

Ponente: MORAN, J.

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MORAN, J.:

In the forthcoming national elections, the following are the registered candidates for the office of Representative for the second district of Mountain Province: Ramon P. Mitra, a Nacionalista, seeking reelection; Igmidio Galang of the Ganap Party which did not poll the required minimum of ten per centum of the total votes cast in the 1938 elections and who now makes no claim for minority inspector; Virginia Oteyza, Fernando Gorospe and Ambrosio Rodriguez, all Nacionalistas. The first inspector has been awarded to the Nacionalista Party duly represented by Ramon P. Mitra. Petitioner here, Antonio Rimando, claiming to have obtained the second largest number of votes for the office of Assemblyman in the second district of Mountain Province in the 1938 elections, addressed a petition to the Commission on Elections in behalf of and for the benefit of Fernando Gorospe, asking that the minority inspector be awarded to Fernando Gorospe. The Commission denied his petition and instead awarded the minority inspector to Virginia Oteyza on the ground that, from the evidence before it, Oteyza appeared to be the strongest among the opponents of Ramon P. Mitra. This decision of the Commission is now sought to be reviewed in this petition for certiorari as constituting a grave abuse of discretion.

Under section 5 of Commonwealth Act No. 657, the right to minority representation in the board of election inspectors is conferred to "the party which polled the next largest number of votes" at the preceding election, "if the same constitute at least ten per centum of the total number of votes cast in the said election." Aside from the Nacionalista Party which polled the largest number of votes at the 1938 election in the second district of Mountain Province, and to which Ramon P. Mitra, Virginia Oteyza and Fernando Gorospe belong, there is no other party which polled the minimum votes required by law. No party is accordingly entitled to a minor inspector.

If the petitioner lays any claim at all for minority representation, it is on the basis of his having obtained at the 1938 elections the second largest number of votes cast therein. But the right to minority representation is determined not by the number of votes a candidate may have obtained but by the number of votes a political party has polled at the preceding election. As petitioner here and the candidate in whose behalf he filed his petition also belonged to the Nacionalista Party in the 1938 elections, he cannot claim a right separate and distinct from what that party is entitled to under the law.

Petitioner finally seeks to rest his claim to minority representation on the basis of his being the head of a local faction of the Nacionalista Party. We have, however, ruled that, for the purpose of representation in the board of election inspectors, where a duly organized political party exists in a locality, no recognition can be accorded any faction or group of such political party. (*Sumulong vs. Commission on Elections*, 40 Of. Gaz., 9th Sup. (No. 13) pp. 216, 230-231).

Having arrived at the conclusion that no party is entitled to minority representation in the second district of

Mountain Province, the Commission on Elections could accordingly exercise its discretion in the appointment of the second inspector. (Commonwealth Act No. 657, sec. 5; *Vinzons vs. Commission on Elections et al.*, G. R. No. 48596, October 1, 1941.) The award of such inspector by the Commission to Virginia Oteyza on the basis of her being apparently the strongest among the opponents of Ramon P. Mitra does not constitute, if at all, such grave abuse of discretion as to warrant interference by this court.

Order is affirmed, with costs against petitioner.

Avanceña. C. J., Abad Santos and Horrilleno, JJ., concur.

Ozaeta, J., dissenting:

I reiterate herein my dissenting opinion in *Vinzons vs. Commission on Elections et al.*, G. R. No. 48596, to the effect that where no minority party is entitled to the second election inspector under section 5 of Commonwealth Act No. 657, the Commission itself should choose that inspector, who should be a nonpartisan. (See section 6, Commonwealth Act No. 657.)

The Commission on Elections awarded the second inspector to Miss Virginia Oteyza on the ground that it believed her to be the strongest among the four opponents of Candidate Ramon P. Mitra. That, in my opinion, is not warranted by law. The Commission should appear neutral. It should not lay itself bare to any criticism of partiality by judging the chances of success of any candidate. It is not necessary for it to determine who is likely to win. It should simply follow the law by using its own discretion in choosing the second inspector which would have corresponded to a minority party had there been one entitled thereto under the law. By allowing one of the candidates to make the choice for it, the Commission abdicated its authority and discretion and at the same time seemed to discriminate against the other candidates.

For these reasons, I dissent from the decision of the majority which affirms the order of the Commission on Elections.

Order affirmed.

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