

RODOLFO C. FARIÑAS, PETITIONER, VS. COMMISSION ON ELECTIONS AND ANTONIO F. LAZO, RESPONDENTS.

G.R. No. 52431. July 30, 1981

Ponente: AQUINO, J.

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AQUINO, J.:

Rodolfo Fariñas, 28, filed on January 4, 1980 with the election registrar of Laoag City his certificate of candidacy is the standard bearer of the Nacionalista Party the position of mayor of that city in the election held on January 30, 1980.

At four-thirty in the afternoon of that same day he filed with the Commission on Elections in Manila another certificate of candidacy wherein he indicated that he was nominated by the Kilusang Bagong Lipunan as its official candidate for mayor of Laoag City.

At the same time, he wrote to the election registrar at Laoag City a letter withdrawing his certificate of candidacy under the banner of the Nacionalista Party. Fariñas said that his first certificate of candidacy was a mistake since he was actually running as a KBL candidate (p. 44, Rollo).

On January 8, 1980, Ernesto T. Fariñas wrote a letter informing the provincial election registrar at Laoag City that Rodolfo C. Fariñas headed the KBL ticket for the elective positions in Laoag City (p 43, Rollo). On January 20, 1980, Laoag City was declared a free zone as far as the KBL was concerned.

In view of those two certificates of candidacy of Fariñas, Antonio F. Lazo, the other KBL candidate for mayor, filed with the Comelec on January 20, 1980 a petition to disqualify Fariñas. A copy of the petition was served upon Fariñas. He answered it on January 25, 1980. His answer was not verified. The case was heard the next day, Saturday, at four o'clock in the afternoon. No oral evidence was received. The parties submitted as exhibits the annexes to their pleadings.

The Comelec in its brief Resolution No. 8547 in PDC No. 158 dated January 28, 1980 (two days before the election and the very day when Fariñas submitted his verified answer to replace the unverified answer which he had previously filed) held that Fariñas' candidacy should not be given due course because of turncoatism and "for engaging in partisan political activities before the campaign period" (See Presidential Decrees Nos. 1296 and 1661).

The next day, January 29, Fariñas filed in this Court a petition for certiorari wherein he assailed that resolution. A restraining order was immediately issued to stop its enforcement. Hence, Fariñas remained as a KBL candidate.

In spite of the disqualification resolution, which was made known to the voters, Fariñas won the election by a margin of 6,419 votes over Lazo. Fariñas was proclaimed on February 6 as the duly elected mayor after the Comelec had lifted its order suspending the proclamation (p. 69, Rollo).

Theorizing that the Comelec in allowing his proclamation, had tacitly acknowledged that he was qualified for the

position of mayor, Fariñas on February 13, 1980 filed a motion to withdraw his instant petition. He said that it had become moot and academic.

The Comelec, through the Solicitor General, manifested that this case was not rendered moot by the proclamation of Fariñas (p. 178, Rollo). Respondent Lazo was also of the same opinion. But Fariñas called the Court's attention to the fact that Lazo in his petition of February 5, 1980 to stop the pro-clamation of Fariñas alleged that this case would be rendered moot by that proclamation.

We hold that this case should be returned to the Comelec with the directive that, in the light of supervening events, it should hold another hearing on Lazo's petition to disqualify Fariñas.

The previous hearing before lawyer Horacio Apostol of the Comelec was summary in character and was not adequate to cover the factual issues involved in the case. The parties had no chance to file memoranda. Due to the numerous pending disqualification cases and the nearness of the election, the Comelec did not have ample time and opportunity to receive evidence in this case and to deliberate thereon. Its abbreviated resolution is an indication that the case had not been thoroughly threshed out.

There is some basis for Fariñas' observation that the said resolution was a "midnight disqualification resolution" and that he was denied due process (See *Potencion vs. Commission on Elections*, G. R. No. 52527, September 4, 1980 and cases cited therein.)

WHEREFORE, the Comelec's resolution of January 28, 1980, disqualifying Fariñas, is set aside. The Comelec is directed to set anew for hearing the disqualification petition of respondent Lazo, to receive the evidence of the parties and to render another decision. No costs.

SO ORDERED.

Teehankee, Barredo, Makasiar, Concepcion, Jr., Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

Fernando, C.J., no part.

Abad Santos, J., reserves his vote.

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