

JESUS L. VILLEGAS, PETITIONER, VS. COMMISSION ON ELECTIONS, LORENZO G. TEVES AND THE PROVINCIAL BOARD OF CANVASSERS OF NEGROS ORIENTAL, RESPONDENTS.

G.R. No. 52463. September 04, 1980

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

A novel provision in the present Constitution is that empowering the Commission on Elections to be "the sole judge of all contests relating to the elections, returns, and qualifications of all Members of the National Assembly and elective pro-vincial and city officials." [1] Thus, its competence is greater than that formerly found in the 1935 Constitution which is limited to the "enforcement and administration of all laws relative to the conduct of elections." [2] Where before it was the Electoral Tribunal and the judiciary that inquired into and passed upon election contests affecting legislative members and provincial and city officials, respectively, a distinction being made between those involving legislative members and provincial and city officials, now it is the Commission on Elections that does so. Its authority to decide pre-proclamation controversies is still one of its functions. [3] The question in this case arose from the fact that during the pendency of such a proceeding before respondent Commission, an election protest was filed by petitioner against private respondent Lorenzo G. Teves, who was duly proclaimed provincial governor of Negros Oriental by the Board of Canvassers, having obtained 160,592 votes as against 65,204 votes of petitioner. [4] It is undoubted that the law affords a remedy to one who has lost in an election, if in the conduct thereof, there has been a violation of the Election Code. The specific question is whether under the particular circumstances of this controversy, it should be through a protest and not through a pre-proclamation suit.

Our answer is that it should be the former. Accordingly, this certiorari and prohibition proceeding aimed at compelling respondent Commission to order the Provincial Board of Canvassers of Negros Oriental to suspend the canvass of votes for governor and to consider the certificate of candidacy of respondent Teves cancelled is dismissed. It is quite evident that at this stage, no useful purpose would be served.

The relevant facts are not in dispute. There was filed with respondent Commission on February 1, 1980 by petitioner, an Urgent Petition to Suspend the Canvass of Votes and the Proclamation and Cancellation of the Certificate of Candidacy of respondent Teves. [5] On February 2, 1980, a resolution in the above petition was promulgated by respondent Commission stating that inasmuch as "specific violations of the Election Code on prohibited acts, such as illegal election propaganda, massive vote buying, terrorism, etc.; considering that the grounds alleged are proper grounds for an election protest or criminal action, [it resolved] to deny the aforementioned petition." [6] It was not until February 5, 1980 that petitioner elevated the matter to this Court. As noted earlier, as far back as February 2, 1980, the Provincial Board of Canvassers had proclaimed respondent Teves as the provincial governor-elect of Negros Oriental with the majority of over 95,000 votes. At the time, therefore, that the urgent petition was filed with this Court, there had already been a proclamation. It is regrettable that counsel, in his petition, did not so inform this Tribunal. Upon being required to comment, respondent Teves

pointed out that he had on March 1, 1980 taken his oath of office, duly assumed the position and thereafter exercised the functions of governor of Negros Oriental.[7] In addition, the comment pointed out that there was pending an election protest before respondent Commission with petitioner Jesus L. Villegas and the other candidates of his party for the positions of vice governor as well as members of the Sangguniang Panlalawigan,[8] contesting his election and that of his party-mates. A copy of the protest was likewise included which indicated that it was filed with respondent Commission on February 9, 1980 and that the grounds alleged in the pre-proclamation controversy were the same grounds on which the protest was based.[9] Moreover, respondent Teves had filed on March 4, 1980 his answer with a counterclaim.[10] It is thus clear that the election protest is still pending with the respondent Commission. The prayer was for the dismissal of the petition.

Solicitor General Estelito P. Mendoza,[11] in his comment likewise sought its dismissal. As was therein pointed out: "Considering, however, that respondent Lorenzo G. Teves had already been proclaimed as the winner in the gubernatorial elections in Negros Oriental, that he had already taken his oath and that he had already assumed the office of the governor of said province, the instant petition has become moot and academic; 3. Furthermore, as correctly observed or ruled by the COMELEC, in its resolution of February 2, 1980 * * * the grounds relied upon by petitioner in PP No. 63 which are the same grounds alleged by him in this instant petition are proper grounds for an election protest or criminal action." [12]

Both comments were considered as answers and the case submitted for decision. As set forth at the outset, the petition cannot prosper.

On the face of the urgent petition before respondent Commission on Elections, which was dismissed in the assailed resolution of February 2, 1980, the grounds in the pre-proclamation controversy are that respondent Teves committed acts violative of certain sections of the 1978 Election Code,[13] specifically referred to as giving money or other material inducements to influence, induce, or corrupt the voters; committing acts of terrorism to enhance his candidacy; attaching or displaying billboards on tricycles or other motor vehicles in announcing or advertising his candidacy, during the prohibited period of campaigning, and on election day; showing or displaying publicly advertisement or propaganda in favor of his candidacy by means of cinematography; giving free of charge, directly or indirectly, transportation, food, or drinks or things of value during a public meeting in favor of several candidates not only during the three hours before and after such meetings, but also on the day preceding the election and on the day of the election; engaging in massive vote buying; using public funds under any guise whatsoever, directly or indirectly, for an election campaign; using government equipment and vehicle for any election campaign or for partisan political activity; availing himself of any scheme to discover the contents of the ballot of a voter who has just voted; transferring the location of a voting center without proper authority; violating the integrity of official ballots by adding false ones to the genuine ones, and altering results in electoral precincts counting of votes; altering certified list of voters to confuse voters or for the purpose of discouraging voters from casting his vote resulting in the disenfranchisement of 20% of the entire voting population of the province and registering new and qualified voters on election day and allowing them to vote; allowing or inducing flying voters to vote more than once in the same election; using of ballots other than the one given by the election committee to alter results of counting votes; distributing sample ballots inside voting centers; and holding in some precincts, elections a day prior to January 30, 1980.[14]

As noted in the comment of respondent Teves, those are the very same grounds in the election protest filed with respondent Commission on February 9, 1980. It becomes quite apparent then as to why this petition should be dismissed. No harm whatsoever could be caused petitioner Villegas. The opportunity for him to prove such a wholesale allegation of massive fraud and violations of the Election Code is still there. The election protest which he himself had filed with respondent Commission three days after this urgent petition for certiorari and

prohibition was submitted to this Tribunal is an even more appropriate vehicle for that purpose. Nor should it be lost sight of that the election protest was not even made *ex abundanti cautela*. It appears to be a deliberate choice on his part to rely on such a proceeding. If, therefore, dismissal of his petition becomes unavoidable, he should be aware on whose shoulder the responsibility falls. Then, too, it would be a time consuming effort if the pre-proclamation controversy at this stage would have to be sent back to the Commission on Elections for a full-dress hearing. That is essential in the task of adjudication, being one of the cardinal requirements of procedural due process. The election protest, however, would serve just as well, if not better. Moreover, it would be in keeping with the letter and spirit of the Constitution, granting as it did the additional competence to respondent Commission to be "the sole judge of all contests relating to the elections, returns, and qualifications of all Members of the National Assembly and elective provincial and city officials."^[15]

WHEREFORE, this petition is dismissed without pronouncement as to costs.

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

Teehankee, J., files a separate opinion.

Fernandez and Abad Santos, JJ., on official leave.

[1] So it is provided in Article XII, C, Sec. 2, par. 2 of the Constitution.

[2] Article X, Sec. 2 of the 1935 Constitution reads as follows: "The Commission on Elections shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law."

[3] According to Sec. 175 of the 1978 Election Code: "The Commission shall be the sole judge of all pre-proclamation controversies and any of its decisions, orders or rulings shall be final and executory. It may, *motu proprio* or upon written petition, and after due notice and hearing order the suspension of the proclamation of a candidate-elect or annul any proclamation, if one has been made, on any of the grounds mentioned in Sections 172, 173 and 174 hereof."

[4] Comment of private respondent Lorenzo G. Teves, par. 3, Annex 1.

[5] Petition, par. II and Annex A.

[6] *Ibid.*, par. IV and Annex B.

[7] Comment of private respondent Teves, par. 3.

[8] *Ibid.*, par. 2.

[9] *Ibid.*, Annex 2.

[10] *Ibid.*, Annex 3.

[11] He was assisted by Assistant Solicitor General Reynato S. Puno and Solicitor Zoilo A. Andin.

[12] Comment of the Solicitor General, 2.

[13] The sections referred to are: Section 39(a) and (c); Section 44; Section 178(e), (j-3), (h-h), (p-p), (w-w), (ddd), (ggg) and (iii) and Section 186-(3) sub-paragraphs (a), (b), (e) and (f).

[14] Cf. Petition, Annex A.

[15] Article XII, C, Sec. 2, par. 2 of the Constitution.

SEPARATE OPINION

TEEHANKEE, J.:

The Court's decision penned by the Chief Justice, in dismissing the petition at bar, sustains respondent Comelec's denial on February 2, 1980 of the Urgent Petition to Suspend the Canvass of Votes and the Proclamation and Cancellation of the Certificate of Candidacy of respondent Lorenzo G. Teves, filed with it on February 1, 1980 by petitioner Jesus L. Villegas, whom respondent Teves defeated in the January 30, 1980 election for the office of governor of the province of Negros Oriental by a vote of 160,592 votes as against 65,204 votes of petitioner. Respondent Teves was accordingly proclaimed as the winner and took his office on March 1, 1980 and thereafter assumed the position and discharged the functions of governor of the province.

The Comelec, noting the allegations of massive fraud and wholesale "violations of the Election Code on prohibited acts, such as illegal election propaganda, massive vote-buying, terrorism, etc." (see pages 4 - 5 of the main opinion), considered that the grounds alleged are "proper grounds for an election protest or criminal action" and therefore denied the petition to suspend the canvass of votes and proclamation and to cancel respondent Teves' certificate of candidacy.

I concur. Section 175 of the 1978 Election Code^[1] envisages summary pre-proclamation proceedings whereby any of the grounds mentioned in Sec. 172 (material defects or omissions in the election returns), Sec. 173 (tampered or falsified election returns) and Sec. 174 (discrepancies in the different copies of the election returns) is summarily determined with certainty to exist and the Comelec, after due notice and hearing therefore orders the suspension of the proclamation of a candidate-elect or annuls his proclamation if one has already been made, so as to avail of the remedy provided in the cited sections of opening the ballot boxes and making a true count of the votes cast, provided that the identity and integrity of the ballot boxes and of the ballots therein have been duly preserved to the Comelec's satisfaction.

The teaching of the Comelec's denial of the petition as sustained by this Court is that the power to suspend or annul proclamations under Section 175 of the Election Code is to be sparingly and cautiously exercised and that where the grounds alleged in support are proper grounds for an election protest (which Cannot readily be determined in summary pre-proclamation proceedings), then the proper remedy is through an election protest, so that in the language of the Chief Justice, there may be "a full dress hearing [which] is essential in the task of adjudication, being one of the cardinal requirements of procedural due process. Moreover, it would be in keeping with the letter and spirit of the Constitution."^[2]

It should also be stressed in this connection that under the Election Code there is no provision for suspension of canvass but on the contrary it ordains categorically in Section 169 that the board of canvassers shall meet not later than 7 p.m. of election day to canvass the election returns that may already have been received and that it shall meet continuously from day to day until the canvass is completed and may adjourn but only for the purpose of awaiting the other election returns^[3] Section 165 of the Election Code further provides that no member of the canvassing board or substitute member shall leave his official station "during the period beginning election day until the proclamation of the winning candidates."

Following the same above reasoning of the Comelec as sustained by this Court, much less may Section 186 of the Election Code be invoked or availed of to support the petition. Said Section 186, specifically paragraph 3 thereof, literally charges the Comelec with the power, duty and responsibility "to cancel at any time before proclamation the certificate of candidacy of any candidate found, through summary proceedings, to have (a) given money or

other material inducements to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) solicited or received contributions from foreigners or foreign government; (d) violated the provisions regulating campaign propaganda; (e) committed any of the prohibited acts provided in Section 178 hereof; (f) knowingly tolerated his supporters in committing such acts; or (g) spent for his campaign more than the amount provided in Section 51 hereof."

Manifestly, such power "to cancel at any time before proclamation the certificate of candidacy, found through summary proceedings [inter alia] to have ... (e) committed any of the prohibited acts provided in Section 178 hereof" may not be exercised arbitrarily or summarily, save where the candidate is apprehended or caught in flagrante delicto. Otherwise, the power would be a terrible instrument of harassment and oppression, particularly of candidates who don't enjoy the blessings of the powers that be. Respondent Teves was charged by petitioner with the commission of all these prohibited acts on a massive scale, but as already stated above, these are grounds for an election protest which have yet to be determined after a full dress hearing in accordance with the cardinal requirements of procedural due process.

By way of a footnote to the statement in the main opinion that the present Constitution has given "greater competence" to the Comelec in that it empowers the Comelec now to be "the sole judge of all contests relating to the elections, returns and qualifications of all members of the National Assembly and elective provincial and city officials"[4] in addition to its limited powers under the old (1935) Constitution to enforce and administer all laws relative to the conduct of elections,[5] the present Constitution expressly provides in Article XII C thereof that "SEC. 11. Any decision, order, or ruling of the Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from his receipt of a copy thereof." This constitutional provision, prescinding from the judicial power vested by the Constitution in the Supreme Court, of course prevails over the provision of section 193 of the Election Code that (T)he decision of the Commission shall be final, executory and unappealable.

I am constrained, as in *Venezuela vs. Comelec*[6] as well as in *Potencion vs. Comelec*,[7] promulgated also this month, to make a final note in the form of an earnest wish that the Comelec take and apply equally and consistently the same salutary position and ratio decidendi here to all other pending pre-proclamation cases (involving on the whole opposition party winners), and whereby this Court's dockets would then be swept clean of the pending cases elevated to it.

To cite a few cases that readily come to mind, in *Olfato vs. Comelec*[8] the Comelec inconsistently took the opposite position by setting aside its previous denial or dismissal of the petition for suspension or annulment of proclamation since the grounds alleged are proper grounds for election protest and declared the proclamation as merely "temporary", subject to the final outcome of the petition for annulment of proclamation, notwithstanding that the duly proclaimed winner had already assumed office and is duly discharging his official functions as municipal mayor of Tanuan and election protests involving municipal offices fall within the jurisdiction of the regular courts of first instance.[9] Its reversal of position has been challenged in this Court and is pending resolution.

In *Lopez vs. Santos and Comelec*,[10] the Comelec likewise inconsistently took the opposite position and reversed its original order that respondent file the proper election protest and instead ordered the "continuation of the election" in certain voting centers in Davao City which were reduced by this Court to 20 voting centers per its resolution of May 16, 1980 notwithstanding that the Court was closely divided thereon, considering that "the need for avoidance of any further delay in ascertaining who is entitled to the position of mayor is of a compelling character," as stressed by the Chief Justice in his vote. Such "continuation of the election" to determine whether the ostensible winner Lopez can still be overtaken by his opponent and in the negative event to finally allow him

to take his rightful office (7 months after the election!) has yet to be implemented by the Comelec up to this late date.

[1] "SEC. 175. Suspension and annulment of proclamation. - The Commission shall be the sole judge of all pre-proclamation controversies and any of its decisions, orders or rulings shall be final and executory. It may, motu proprio or upon written petition, and after due notice and hearing order the suspension of the proclamation of a candidate-elect or annul any proclamation, if one has been made, on any of the grounds mentioned in Sections 172, 173 and 174 hereof." (Italics supplied.)

[2] At page 6 of the main opinion.

[3] The cited section reads: "SEC. 169. Canvass by the board. - The board of canvassers shall meet not later than seven o'clock in the evening of election day to canvass the election returns that may have already been received. It shall meet continuously from day to day until the canvass is completed, and may adjourn but only for the purpose of awaiting the other election returns from other voting centers within its jurisdiction. Each time the board adjourns, it shall make a total of all the votes canvassed so far for each candidate for each office, furnishing the Commission in Manila by the fastest means of communication a certified copy thereof, and making available the data contained therein to mass media and other interested parties. As soon as the other election returns are delivered, the board shall immediately resume canvassing until all the returns have been canvassed.

"The board shall prepare a certificate of canvass supported by a statement of the votes received by each candidate in each voting center in the region and on the basis thereof, shall proclaim as elected the candidates who obtained the highest number of votes cast in the region." (Italics supplied.)

[4] Article XII C, section 2, par. (2), 1973 Constitution.

[5] Article X, sec. 2, 1935 Constitution.

[6] G.R. No. 53532, prom. July 25, 1980.

[7] G.R. No. 52527.

[8] G.R. No. 52749, pending.

[9] Sec. 190, Election Code.

[10] G.R. No. 52758, prom. May 16, 1980.

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