

JAIME F. MARIÑO, IN HIS CAPACITY AS PROVINCIAL CHAIRMAN OF THE NACIONALISTA PARTY (NP) FOR THE PROVINCE OF NEGROS OCCIDENTAL AND ZENAIDA JAMANDRE NESSIA, PETITIONERS, VS. COMMIS...*G.R. No. 52479. March 28, 1985*

Ponente: FERNANDO, C.J.

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It is a novel question that is raised by petitioner Jaime F. Mariño, the Provincial Chairman of the Nacionalista Party for the Province of Negros Occidental and the Nacionalista Party candidate for Mayor,[1] in this certiorari proceeding against respondent Commission on Elections.[2] It arose from the two resolutions of respondent Commission issued on January 29, 1980, the first of which suspended the holding of the election to be held the next day in the City of La Carlota, with the second resolution issued later on the same day, reconsidering the resolution suspending the election and directing respondent City Registrar of La Carlota "to proceed to the distribution of ballots, election forms, supplies and other paraphernalias to the Citizens Election Committee and to continue with the holding of the election on January 30, 1980." [3] The petition prays that respondent Commission postpone indefinitely the proclamation of the winning candidates in La Carlota City, declare the election held therein on January 30, 1980, as well as the election result null and void, and set a date for a new election in La Carlota City, after the list of permanent voters had been prepared pursuant to the Election Code of 1978.[4]

As may be implied from the petition itself the election for municipal officials took place as scheduled on January 30, 1980. It was alleged by petitioner, however, that on that day, "there was no certified list of voters. Respondent election registrar and members of the Citizens Election Committee did not prepare a list or certify a list containing a complete list of voters for each voting center for lack of time." [5] Under such circumstance, it was alleged that the candidates who claimed to have won, "took advantage of the situation by hauling flying voters, trucks by trucks, into the voting centers, and thru the connivance of the Chairmen and Poll Clerks, said flying voters in thousands of them were allowed to vote." [6] It was further alleged that there were voters whose names, however, not listed "by the partisan and biased Barrio Captains were not allowed to vote." [7]

As may be noted, the petition did not even specify who were the candidates by the respective parties, much less who of them won. The Answer of respondents took care of the matter thus. "The results of the elections, following the counting of ballots and canvass of election returns at which the contending political parties participated, were as follows:

"For Mayor:

1. Luis Jalandoni, Jr., KBL

-

13,513 votes

2. Jaime F. Mariño, NP

-

2,025 votes

3. Benjamin, Benedicto, Ind.

-

147 votes

For Vice Mayor:

1. Jose Liansing, Sr., KBL

-

12,315 votes

2. Juan Vicencio, NP

-

3,201 votes

For Sangguniang Panglunsod:

1. Juancho Aguirre, KBL

-

13,439 votes

2. Vicente Flores, KBL

-

13,261 votes

3. Davig Baga, KBL

-

12,994 votes

4. Hernane Jimenez, KBL

-

12,864 votes

5. Tomas de Leon, KBL

-

12,733 votes

6. Lea Valera, KBL

-

12,709 votes

7. Lydio Lachica, KBL

-

12,648 votes

8. Ricardo B. Teruel, KBL

-

12,506 votes

9. Sabas Florete, KBL

-

1,587 votes

10. Romeo Niere, NP

-

1,532 votes

11. Ariel Villaseñor, NP

-

1,432 votes

12. Edd Rodriguez, NP

-

1,083 votes

13. Lourdes Ramos, NP

-

995 votes

14. Anacleto Jereza, NP

-

962 votes

15. Roberto Uriarte, NP

-

884 votes

16. Fe delos Reyes, NP

-

846 votes"[8]

Respondents likewise denied the claim of petitioners as to the manner the election was conducted, it being alleged by them: "Contrary to the claim of petitioners, the January 30, 1980 elections in La Carlota City were free, honest and peaceful. The petitioner Marino and his party as well as the party of the KBL participated actively in the elections. Each party was represented at the voting centers by their poll-watchers and supporters. No untoward incident was reported to respondent registrar. No act of terrorism, harassment, intimidation or other election offenses was reported by petitioner Mariño or his party members or by anyone. * * * Two hundred twenty-three (223) chairmen and members (all teachers) of the citizens election committees concerned (out of a possible total of 243) likewise state in their affidavit "that the voting in our respective voting centers during the whole day of the election of January 30, 1980 in La Carlota City was free, orderly and peaceful, and that all the candidates, their political leaders and followers freely voted and voluntarily and actively participated in said election. * * *"[9] Further on this point: "Only two protests were filed on election day with the citizens election committees and these were filed by a representative of petitioner Mariño. The protests concerned two voters, Mrs. F. Poblete and Florence Moyco, who were allegedly allowed to vote despite the absence of their names in the reconstituted list of voters."[10]

The Answer also explained the circumstances which led to the first resolution of respondent Commission suspending the election only to be subsequently reconsidered thus allowing the election to take place. Thus: "On May 2, 1979 a fire that originated some distance away from the office of the respondent Comelec Registrar of La Carlota City burned the latter office and about half of all the commercial buildings in the City. As a result, all the records and equipment kept by respondent registrar in his office were destroyed, including the book and master list of registered voters in La Carlota City. Shortly after the fire, respondent registrar began reconstitution of the list of registered voters in the city. Fortunately, he had kept in his residence extra copies of a substantial portion of the official list used in the 1978 elections for the Interim Batasang Pambansa. What these copies lacked, he made up with the authentic copies which were furnished the barangay captains of the various barangays in the city during the elections mentioned. Accordingly, by the time the elections for local government officials were announced in the second week of December, 1979, respondent registrar had already fully reconstituted the destroyed master list of voters in La Carlota City. Immediately following the filing of petitioner Mariño of his certificate of candidacy for the position of mayor of La Carlota City, he made inquiry with the respondent registrar regarding the list of registered voters in the city. After being shown the reconstituted list and informed of its basis, he sent about ten of his representatives to respondent registrar for the purpose of copying his list. Respondent registrar allowed them to do so and the copying lasted about three days. Subsequently, pursuant to decrees issued by the President, a registration of voters at the voting center level took place in La Carlota City on January 19, 20, 26 and 27, 1980. Copies of the reconstituted list of registered voters were given to the respective citizens election committees of the voting centers on the dates mentioned for the purposes of adding to that list the names of the newly registered voters and to enable previously registered voters to verify their inclusion in the list. Likewise added to this list were the voters who registered directly with respondent registrar pursuant to law. The

list, as finalized, contained the names of 24,701 registered voters. On the evening of January 27, 1979 as soon as the certified list of registered voters to be used in the January 30, 1980 election had been finalized in proper form, respondent registrar personally delivered a set of copies thereof to each of the political parties participating in the election as well as to the citizens election committees (two sets), through the City Superintendent of Schools. Other sets of copies of the voters list were sent to respondent Commission on Elections in Manila and the Provincial Election Supervisor in Bacolod City. The original copies of the list were retained by respondent Registrar for his file."^[11]

More specifically, concerning the issuance of the two resolutions, it was alleged in the Answer that the Special Action Team of the respondent Commission in the Visaya and Mindanao headed by Attorney Vicente D. Gerochi, Jr. recommended the suspension of the local elections in view of the absence of what it considered "a proper voters list."^[12] On the morning of January 29, 1980, such recommendation was favorably acted upon and a resolution to that effect was issued by respondent Commission.^[13] Upon the executive session of respondent Commission being resumed at 2:00 o'clock the same day, Commissioner Flores Bayot who was unable to attend the meeting that morning, being on official business, on learning of the postponement and the reasons given by Attorney Gerochi, Jr., recommended the setting aside of the first resolution for the reason that there existed a reconstituted list of registered voters, a recommendation acted upon favorably by the Commission which thus resolved to lift its previous order postponing the election.^[14] The second resolution was then immediately transmitted to respondent Registrar for implementation on that afternoon of January 29, 1980, with the respondent Registrar informing "the political parties concerned and, through available media, the public, of the decision to proceed with the elections in La Carlota City. The preparation and distribution of all election paraphernalia, including the list of registered voters, were completed on time."^[15]

To repeat, the election was held on January 30, 1980, with the candidates of the Kilusang Bagong Lipunan emerging victorious. As early as February 2, 1980, they were proclaimed. The petition itself was filed only on February 6, 1980. Thus, a restraining order issued by this Court came too late. There was a reply to the answer filed by the petitioners. The narration of respondents was refuted and the argument that there was no permanent list of voters nor a certified list and book of voters reiterated. It was likewise alleged that "said election at La Carlota City was the dirtiest as massive fraud were committed while taking advantage of such anomalous situation,"^[16] prompting civic and religious leaders of the City to send telegram to President Ferdinand E. Marcos as well as to then Chairman Leonardo Perez of the Commission on Elections praying for the annulment of the election. It is worth noting that notwithstanding the fact that the restraining order proved ineffective as the proclamation had been made, there was no amendment of the prayer in the Reply submitted. It merely repeated what was stated in the petition. All that was asked was that the election as well as the election result be declared null and void and that respondent Commission set a date for a new election. That was all.

There was clearly lack of regularity in preparing the list of voters. In that sense, a complaint against what was done by respondent Commission is not unjustified. Nonetheless, such a failing was cured by the fact that in the last May 14, 1984 elections for the Batasang Pambansa, the situation must have been remedied. Moreover, with the lapse of time and the next local elections, being barely a year away, no useful purpose would be served by pursuing the matter further. Suffice it to say that respondent Commission could have exerted greater diligence on the matter, the fire having occurred as far back as May 2, 1979.

It would thus appear that the meaningful issue now is whether or not, considering the contradictory claims as to how the election was conducted, petitioner as the defeated candidate for Mayor could still pursue an election protest. That question, in the light of the previous decisions of this Court, must be answered in the affirmative. This Court, in a host of decisions impressive for their number and unanimity, has made clear that there is no surer

way of determining the choice of the people for an elective position than to allow a protest in an appropriate case.[17] Considering the allegation as to the manner the January 30, 1980 elections was conducted in La Carlota City, this is one of them. A respect for the constitutional right of suffrage mandates that petitioner should be afforded that remedy. The law, especially its equitable aspect, would be satisfied with nothing less.

WHEREFORE, the petition is dismissed without prejudice to petitioner filing a protest, within a period of ten days from receipt of this decision, if so minded. This decision is immediately executory. No costs.

Aquino, Melencio-Herrera, Plana, Relova, Gutierrez, Jr., De La Fuente, Cuevas, and Alampay, JJ., concur.

Teehankee and Abad Santos, JJ., dissent in separate opinions.

Concepcion, Jr., Escolin, and Makasiar, JJ, are on leave.

[1] The other petitioner is Zenaida Jamandre Nessia, in her capacity as a registered voter in La Carlota City.

[2] The other respondent is the City Registrar of La Carlota City.

[3] Petition, Annex C.

[4] Ibid, Prayer, 10.

[5] Ibid, par. 9.

[6] Ibid, par. 10. In this paragraph, reference was likewise made to a Book of Voters and a Permanent List of Voters.

[7] Ibid.

[8] Answer, par. 27.

[9] Ibid, par. 25.

[10] Ibid, par. 26.

[11] Ibid, pars. 16-20.

[12] Ibid, par. 21.

[13] Ibid, par. 22.

[14] Ibid, pars. 22-23.

[15] Ibid, par. 24.

[16] Petitioner's Reply, 3.

[17] Some of the cases follow: *Venezuela v. Commission on Elections*, G.R. 53532, July 25, 1980, 98 SCRA 790; *Potencion v. Commission on Elections*, G.R. 52527, Sept. 4, 1980, 99 SCRA 595; *Agcaoili, Jr. v. Santos*, G.R. 52791, Feb. 26, 1981, 103 SCRA 350; *Mitmug v. Commission on Elections*, G.R. 54082, March 24, 1981, 103 SCRA 455; *Faderanga v. Commission on Elections*, G.R. 55938, June 26, 1981, 105 SCRA 123; *Disini v. Commission on Elections*, G.R. 52502, Dec. 30, 1982, 119 SCRA 511; *Resurreccion v. Commission on Elections*, G.R. 57219-20, Jan. 4, 1984, 127 SCRA 1.

DISSENTING OPINION

ABAD SANTOS, J.:

The petitioner's main prayer is for the annulment of the election for local officials and the results thereof held in La Carlota City on January 30, 1980. It is based on the claim that when the election was held there was no permanent list of voters nor a certified list and book of voters.

The ponencia admits that:

"There was clearly lack of regularity in preparing the list of voters. In that sense, a complaint against what was done by respondent Commission is not unjustified. x x x . Suffice it to say that respondent Commission could have exerted greater diligence on the matter, the fire having occurred as far back as May 2, 1979."

But the election and the results are not annulled because:

"[S]uch a failing [the lack of regularity in preparing the list of voters] was cured by the fact that in the last May 14, 1984 elections for the Batasang Pambansa, the situation must have been remedied. Moreover, with the lapse of time and the next local elections, being barely a year away, no useful purpose would be served by pursuing the matter further."

The ponencia tells the petitioner that his petition shall be considered as an election protest to be decided by the Commission on Elections.

Despite the fact that "the equitable remedy of certiorari is granted" to the petitioner, I do not expect to see him celebrating his "victory" for it is but an empty one. It is too sanguine to expect that the election protest which this Court has mandated can be resolved before the next local elections in 1986. What the petitioner asks is for the annulment of the election and its results and anything less than that will not be satisfactory.

DISSENTING OPINION

TEEHANKEE, J.:

I join in the separate dissent of Mr. Justice Abad Santos. The unresolved issue is whether an election for the local officials in La Carlota City could be validly held by respondent Comelec on January 30, 1980 when admittedly all the registration and voting records, including the book and master list of registered voters of the City, had been burned in a large fire that occurred a year before on May 2, 1979, and these vital voting records had not been officially reconstituted nor was a new official list of voters and book of voters ever prepared. Corollary to this issue is whether respondent Comelec registrar could at the last our "reconstitute" a so-called "master list of voters" by simply directing all barrio captains "to do the listing of the names of probable voters within their respective jurisdiction" without any supporting voter's application for registration, such that petitioners assail this so-called "master list" for omitting on the one hand thousands of voters who were not able to vote because their names were not in the so-called "master list" and padding on the other hand the so-called "master list" by listing the same voters two or three times in the different voting centers.

Respondents Comelec and city registrar having failed to exercise due diligence in preparing or reconstituting the official and certified voters' list, as required by section 89 of the 1978 Election Code, notwithstanding that they had ample time of almost a year to do so (as pointed out in the decision at page 7), respondent Comelec's act of "flip-flopping" and issuing on the very eve of the election scheduled for January 30, 1980 its resolution lifting its earlier resolution of the very same day (January 29, 1980) suspending the holding of the election in the City due

to lack of the vital voting records, constituted grave abuse of discretion, giving just cause for petitioners' complaint of chaos and confusion on election day with thousands of flying voters having been allowed to vote while thousands of their supporters were allegedly unable to vote for having been excluded from the list.

The proper relief, as prayed for, is the annulment of the anomalous election held under such conditions and the setting of new election after the list of permanent voters has been duly prepared in accordance with law.

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