

**NENA S. POTENCION, PETITIONER, VS. THE COMMISSION ON ELECTIONS, RESPONDENT.***G.R. No. 52527. September 04, 1980*

Ponente: FERNANDO, C.J.

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This petition raises no novel question. It arose from a resolution of respondent Commission on Elections, dated February 4, 1980, ordering the proclamation of Luis S. Etcubañez as the Governor-elect of the Province of Aurora. Accordingly, the Provincial Board of Canvassers did so.[1] The petition likewise encloses the aforesaid resolution worded as follows: "In the matter of the sworn petition dated January 25, 1980, filed by Rodolfo G. Gonzales, a registered voter in the municipality of Baler, province of Aurora, seeking the disqualification of respondent [Luis S. Etcubañez], a candidate for Governor of said province of Aurora under the Kilusang Bagong Lipunan (KBL), on the ground that respondent was the official candidate of the Liberal Party and won as Lt. Governor of the Sub-province of Aurora (now province of Aurora) in the local elections of 1971, in violation of Section 10, Article XII (C) of the Constitution, Batas Pambansa Blg. 52 and P.D. 1661, as amended: Considering the allegations in respondent's urgent motion to dismiss dated February 4, 1980, more particularly the statement that in the elections for members of the Interim Batasang Pambansa in 1978 the respondent was the campaign manager of the KBL in Aurora and so under P.D. 1667 dated January 26, 1980 he shall be deemed to be a member of the KBL as of the date of the political campaign in 1978, aside from the fact that the Liberal Party may be deemed to have become inexistent as it did not nominate candidates both in the elections of 1978 and 1980, and in the light of our resolutions in the other cases of similar nature as in PDC No. 32, entitled *De Leon v. Rodriguez*; the Commission [Resolved] *motu proprio* to [dismiss] the petition of Rodolfo G. Gonzales. The proclamation of respondent as the winning candidates (if it has not yet taken place) for Governor of the province of Aurora shall be, as it is hereby ordered to take place immediately." [2] In the next paragraph of such petition, there was an admission that Luis S. Etcubañez was the Governor-elect, but it was asserted that prior to the order of such proclamation there was already filed by petitioner with the respondent Commission, a petition for disqualification reiterating petitions previously filed by a certain Rodolfo G. Gonzales and a Nacionalista party candidate Estrello T. Ong. [3] Respondent Commission was required to comment. Accordingly the Solicitor General [4] did so. It was therein pointed out that in the elections for governor of Aurora, the results were as follows: "Luis Etcubañez (KBL) - 19,533 votes Estrello Ong (NP) - 16,877 votes Nena Potencion (IND.) - 3,899 votes." [5] Then came this portion of the Comment: "On February 4, 1980 Etcubañez filed an urgent motion with the respondent Comelec for the dismissal of the petitions for disqualification. On the same date, respondent Comelec dismissed the petition of Gonzales on the grounds that Etcubañez joined the KBL in 1978 when he served as the official campaign manager of that party in the elections for members of the Interim Batasang Pambansa and that the Liberal Party of which he was formerly a member may be deemed to have become non-existent due to its failure to nominate any candidate in the 1978 and 1980 elections. In its resolution respondent Comelec directed the proclamation of Etcubañez if the same had not yet been done. \* \* \* The petition of Ong was similarly dismissed." [6]

The Comment was considered as the answer and the case submitted for decision. On the above undisputed facts and in the light of the recent rulings of this Court, this case has to be remanded to the Commission on Elections so that there could be a full-dress hearing on the question of disqualification.

This approach to the resolution of this controversy is in accordance with *Reyes v. Commission on Elections*,<sup>[7]</sup> where the ban imposed by the Constitution providing the change of political party by an elective officer during the term for which he was elected was discussed at some length.<sup>[8]</sup> As is clear from the assailed order of February 4, 1980, there was no hearing whatsoever on the petition for disqualification of Luis S. Etcubañez thereafter proclaimed as Governor-elect of the Province of Aurora. As far back as *Pimentel v. Commission on Elections*,<sup>[9]</sup> this Court made clear that there must be compliance with the cardinal requirements of procedural due process, one of which is the right to be heard. The petition in this case was filed with this Court only on February 11, 1980. A week before, on February 4, 1980, Luis S. Etcubañez was proclaimed. What was said, therefore, in *Venezuela v. Commission on Elections*,<sup>[10]</sup> where disqualification was sought on the very day of the proclamation of respondent therein finds application. As in that case, "the present proceeding cannot with precision be described as a pre-proclamation controversy."<sup>[11]</sup> In order, however, that the parties could have this case terminated with the least possible delay, it is appropriate that it be remanded to the Commission on Elections. That would be in accordance with the controlling provision of the 1978 Election Code, which provides: "The Commission shall be the sole judge of all contests relating to the elections, returns, and qualifications of all members of the interim Batasang Pambansa and elective provincial and city officials."<sup>[12]</sup>

WHEREFORE, this petition is remanded to respondent Commission on Elections and should be treated as either a regular election protest or a quo warranto proceeding based on ineligibility of Luis S. Etcubañez, who should be impleaded by petitioner as the private respondent. No costs.

Barredo, Makasiar, Aquino, Concepcion, Jr., Guerrero, De Castro, and Melencio-Herrera, JJ., concur.  
Teehankee, J., files separate opinion.

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[1] Petition, par. 6.

[2] *Ibid.*, Annex E.

[3] *Ibid.*, par. 7.

[4] Solicitor General Estelito P. Mendoza was assisted by Assistant Solicitor General Vicente V. Mendoza and Solicitor Roberto A. Abad.

[5] Comment, 3.

[6] *Ibid.*

[7] G.R. No. 52699 May 15, 1980.

[8] According to Article XII, C, Section 10 of the Constitution: "No elective public officer may change his political party affiliation during his term of office, and no candidate for any elective public office may change his political party affiliation within six months immediately preceding or following an election."

[9] G.R. No. 52428, February 21, 1980.

[10] G.R. No. 53532, July 25, 1980.

[11] *Ibid.*, 3.

[12] Article XVIII, Sec. 188, The 1978 Election Code.

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### SEPARATE OPINION

**TEEHANKEE, J.:**

In this case, petitioner Nena S. Potencion, a defeated independent candidate in the last local elections of January 30, 1980 for the office of provincial governor of the province of Aurora, complains that respondent Comelec "slept" on the pre-election petitions filed by the Nacionalista Party candidate for the same office, namely, Estrello T. Ong and a registered voter Rodolfo G. Gonzales, seeking the disqualification of KBL candidate respondent Luis S. Etcubañez on the ground of political "turncoatism" (in that said respondent had been elected in the 1967 and 1971 elections as official Liberal Party candidate for lieutenant-governor of Aurora, then a sub-province, and yet switched during his term of office to run as official KBL candidate for governor), thereby allowing him to continue with his candidacy.

Petitioner further complains that on February 4, 1980 she had filed with the Comelec a petition of protest to prevent the proclamation of respondent Etcubañez and for special elections for the office of Aurora governor to be held anew but that it instead dismissed on the same date the Ong-Gonzales petitions for his disqualification and "hastily" ordered his proclamation.

The Comelec in its questioned resolution dismissed the disqualification petition on the ground that respondent Etcubañez under P.D. 1667 dated January 26, 1980 "shall be deemed to be a member of the KBL as of the date of the political campaign in 1978 [when he served as its official campaign manager in the IBP elections], aside from the fact that the Liberal Party may be deemed to have become inexistent as it did not nominate candidates both in the elections of 1978 and 1980 ..." [1]

Petitioner contends, however, that assuming arguendo that respondent Etcubañez became a member of the KBL by having "allegedly acted as the KBL campaign manager in Aurora in the 1978 elections," he "undeniably ... was a member of the Liberal Party when he was re-elected in the 1971 elections as lieutenant-governor of the then sub-province of Aurora" (which term was stretched out until the results of the January 30, 1980 elections, since the 1971 local elections were the last to be held until then) and "his change of political party affiliation during his term of office squarely falls within the interdiction" [2] of Article XII (C), section 10 of the 1973 Constitution which provides, inter alia, that "No elective public officer may change his political party affiliation during his term of office."

The Court's resolution, penned by the Chief Justice, orders the remand of petitioner's petition of protest to the Comelec to be treated "as either a regular election protest or a quo warranto proceeding based on ineligibility of (respondent) Luis S. Etcubañez."

I concur. As the Chief Justice has aptly pointed out, as is clear from the assailed order of February 4, 1980, the dismissal of the petition for respondent's disqualification was done avowedly *motu proprio* by the Comelec and there was no hearing whatever thereon, and there must be compliance with the cardinal requirements of procedural due process, specifically on the right of petitioner to be heard on her petition for disqualification of respondent.

At the same time, as I urged in my separate opinion in *Reyes vs. Comelec*, [3] following the Court's earlier ruling in *Pimentel vs. Comelec*, [4] all such pending pre-election cases seeking to disqualify the winner and the electorate's choice on the ground of alleged turncoatism should be ordered dismissed after the elections held on

January 30, 1980, subject to the filing of a quo warranto proceeding or election protest against him in the proper forum. Thereby, the people's will and undeniable right to have officials of their unfettered choice will thus be respected pending the final determination of the cases remand-ed to the Comelec (involving provincial and city officials, as in this case) or timely filed with the proper Court of First Instance (involving municipal officials), whose decisions are of course subject to final review by this Court at the instance of either party.

In this wise, this Court's dockets would be cleared of all such pending pre-proclamation or post-election cases seeking to disqualify the winners or to prevent or annul their proclamation (even at this late stage, 8 months after the holding of the elections!), in line with the President's own view as reported in the February 27, 1980 newspapers whereby he "ordered the lawyers of the KBL [Kilusang Bagong Lipunan] to withdraw all disqualification charges to allow already proclaimed opposition candidates involved in such cases to assume office, reserving the right to file an election protest" (although such Presidential orders seem to have been ignored since I am not aware of any disqualification case before us that has been so withdrawn).

A full-dress hearing in the appropriate forum on the ground of alleged turncoatism in accordance with due process would provide the parties full opportunity to present all relevant evidence (with confrontation and examination of the witnesses) on the vital factual and legal issues as specified in my separate opinion in *Reyes vs. Comelec*, *supra*.

A final note. In this case as above stated, the Comelec, as sustained in the comment filed by the Solicitor General on its behalf, dismissed the disqualification case against respondent for switching from Liberal Party (under which he was elected) to the KBL on the ground that "the Liberal Party may be deemed to have become inexistent as it did not nominate candidates both in the elections of 1978 and 1980." If the Comelec is to be consistent, it should equally apply this reasoning and ruling in cases where the winners switched from the now "inexistent" Liberal Party not to the majority KBL (as in this case) but to the opposition Nacionalista Party, and the Comelec as represented by the Solicitor General should forthwith recall their pre-proclamation petitions for disqualification against the opposition party winners and concede their victory in deference to the will of the electorate in the cases still pending in this Court.[5]

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[1] Comelec Reso. 8804 (PDC No. 386), cited at p. 3 of the Court's resolution.

[2] Petition, par. 3, at page 5.

[3] G.R. No. 52699, May 15, 1980.

[4] G.R. No. 52428, Feb. 21, 1980.

[5] Cf. the writer's separate opinion in *Valenzuela vs. Comelec*, G.R. No. 53532, July 25, 1980.

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