

RENATO U. REYES, PETITIONER, VS. THE COMMISSION ON ELECTIONS, THE MUNICIPAL BOARD OF CANVASSERS OF BONGABONG, ORIENTAL MINDORO, ERNESTO LIWANAG AND JOSE A. ENRIQUEZ, RESPONDENTS.*G.R. No. 52699. May 15, 1980*

Ponente: FERNANDO, C.J.

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A provision of the present Constitution, both innovative and mandatory, reads: "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." [1] It had been invoked and had been applied in appropriate cases by respondent Commission on Elections. [2] As could be expected, the losing party thereafter filed certiorari proceedings in this Court. In one case, *Amante v. Commission on Elections*, [3] there was a reversal of the order of disqualification. It was not so, however, in two other cases, *Gabatan v. Commission on Elections* [4] and *Evasco v. Commission on Elections*, [5] where there was an affirmance resulting in the order against petitioners remaining unchanged. Fidelity to the authoritative command in the leading case of *Ang Tibay v. Court of Industrial Relations* [6] as to the observance by administrative agencies exercising quasi-judicial powers of the cardinal requirements of due process, the most prominent of which are the right to a hearing and the necessity for substantial evidence in support of its ruling, compelled such a course. That same basic approach was followed in *Pimentel v. Commission on Elections*. [7] There, the disqualification of petitioner mayoralty candidate was set aside, this Court not being satisfied that he was fully heard. The matter was then remanded "to the respondent Commission on Elections so that it could proceed with the proclamation in accordance with the canvassing without prejudice to the ruling thereafter on the question of disqualification of petitioner Pimentel after a hearing to be conducted in accordance with the cardinal requirements of procedural due process." [8]

The ruling in *Pimentel* points the way to the resolution of this controversy. Petitioner Renato U. Reyes was a candidate for Mayor in Bongabong, Oriental Mindoro. According to the petition, when, on January 4, 1980, he filed his certificate of candidacy, he made clear that he was running under the Kilusang Bagong Lipunan, not as a political party but as an umbrella organization. [9] It was then alleged that the Nacionalista Party chairman, unknown to petitioner, on January 10, 1980 filed another certificate of nomination designating him as the official Nacionalista Party candidate. [10] It was the latter that was approved by respondent Commission on Elections. [11] Then on January 25, 1980, came a petition from respondent Ernesto Liwanag, a registered voter of Bongabong, for the cancellation of the certificate of candidacy of petitioner. [12] The Commission on Elections failed to act thereon before January 30, 1980 with the result that petitioner, being a duly certified candidate, was voted for the position of Municipal Mayor, and his votes counted in the canvass thereafter held. [13] Respondent Board of Canvassers of Bongabong canvassed the election returns and thereafter issued a certification to the effect that petitioner obtained 44 more votes than his opponent, respondent Jose A. Enriquez. [14] That ought to have settled

matters, with a proclamation of petitioner being the next step, leaving respondent Enriquez having the choice to file an election protest, but respondent Commission on February 7, 1980 issued a resolution disqualifying petitioner to become a candidate and cancelling his certificate of candidacy.[15] A motion for reconsideration having proved fruitless as no action was taken, this petition was filed with this Court on the assumption that its denial was a fore-gone conclusion.[16] On the very day this petition was filed, this Court issued this resolution: "After deliberating on the petition for certiorari and mandamus, with prayer for preliminary injunction and/or temporary restraining order, the Court resolved, without giving due course to the petition, to require the respondents to comment thereon (not to file a motion to dismiss) within ten (10) days from notice hereof." [17] There was on February 25, 1980, an urgent ex-parte motion of petitioner with the plea that respondents Commission and Municipal Board of Canvassers of Bongabong "desist and refrain from proclaiming respondent Enriquez" as duly elected mayor.[18] Acting on the urgent ex-parte motion filed by counsel for petitioners dated February 23, 1980, this Court on February 28, 1980 amended its resolution granting "the prayer of the petitioners" and issuing "a Temporary Restraining Order, effective as of [such] date and continuing until otherwise ordered by the Court." [19] When this Court was informed by the Chairman of the Municipal Board of Canvassers that before receipt of the restraining order, respondent Enriquez was proclaimed as Mayor-elect, it modified the resolution on March 17, 1980 "by setting aside the proclamation of Jose A. Enriquez as Mayor-elect of Bongabong, Oriental Mindoro, to leave no doubt as to the scope of such restraining order specifically enjoining said respondent Jose A. Enriquez 'from assuming the office of the municipal mayor of Bongabong, Oriental Mindoro, if already proclaimed.'" [20]

It was not so much the recital of the facts as they transpired, but rather their legal significance, that was stressed in the brief four-page comment of private respondents submitted on March 12, 1980. Thereafter, Solicitor General Estelito P. Mendoza[21] filed a manifestation stating that as the aforesaid comment of private respondents had "amply discussed the issues raised," he was adopting it. The case was thus deemed submitted for decision. What immediately calls attention in such comment is that respondents limited themselves, although in a rather offhand manner, to asserting that petitioner was a KBL member and that he ran as a Nacionalista Party candidate. There was no denial therein, though, that there was no hearing. The comment even went so far as to assert that in a case like the present, "due process does not necessarily mean or require a hearing." [22] That assertion flatly contradicts what was held in *Pimentel*.

Nothing can be clearer, therefore, than that petitioner is entitled to the same remedy.

1. While disqualification based on what is popularly known as turncoatism is a novel feature of the Constitution, it cannot escape attention that even under previous election statutes, there were provisions on ineligibility to hold an elective office. It cannot be accurately said, therefore, that there has been a violent break with the past. In the first Election Code[23] that took effect on January 9, 1907, there was a specific section on disqualifications.[24] In the chapter on the election law in the Revised Administrative Code of 1917, again there was a limitation on the number of times an official may be reelected,[25] and on ecclesiastics, soldiers in active service, persons receiving salaries or compensation from provincial or national funds and contractors for public works of the municipality being elected as well as appointed to a municipal office.[26] In a statute revising and compiling the chapter on election law of the Revised Administrative Code,[27] the third reelection of provincial governor and municipal president, now municipal mayor, was prohibited.[28] Another section in the same act provided that a person "delinquent in the payment of taxes cannot assume office to which he has been elected without first paying said taxes." [29] The Election Code enacted during the Commonwealth[30] reiterated the ban on a third consecutive reelection to the offices of provincial governor and mayor.[31] There were likewise provisions on disqualification on account of excessive election expenditures as well as disloyalty to the government.[32] After the establishment of the Republic of the Philippines, a new Election Code was passed.[33] There were provisions

therein declaring a final decision of a competent court finding a candidate guilty of having spent in his election campaign more than the total emoluments attached to the office for one year, or having solicited or received any contribution or of spending more than that allowed by law, or having violated the restrictions on electioneering and the prohibitions regarding transportation, food and drinks as grounds for disqualification.[34] Disloyalty to the government likewise sufficed to cause ineligibility.[35] A year before martial law, the Election Code of 1971 was approved.[36] There was a reiteration of the disqualifications based on the above acts.[37] While this Court had occasion to rule on the question of eligibility to elective municipal positions in *United States v. Neri Abejuela*[38] and *United States v. Madamba*,[39] it was not until *Topacio v. Paredes*,[40] a 1912 decision, that there was an exhaustive and scholarly disquisition on the subject. There have been since then many more cases on disqualification.[41]

2. It is quite obvious, therefore, that from the standpoint of the juridical concept of disqualification, there is no departure from what has been and continues to be. There has been no break with the past, much less a sharp one. This is not to ignore the fact that a constitution as the expression of the people's highest ideals cannot be severed from the texture of the times. In the last Constitutional Convention, it has been willed by the framers and ratified by the people that the virus of turncoatism should be remedied. Hence, the adoption of this novel provision. This Court has given it force and effect. So it should be, as the constitution is the supreme law. Such being the case, it cannot be said that there is a disregard of the equally cardinal concept of an elector being a "particle of popular sovereignty"[42] because the candidate he voted for happens to be thereafter declared disqualified. The right of suffrage remains undefiled, but the candidate who is the beneficiary of its exercise is by law deemed ineligible. It has always been so as attested to by the previous decisions cited. In thus according respect to the fundamental law, the popular will has not been ignored. For that is precisely to abide by and not to defy what the constitution commands, the highest expression of its sovereign power. The duty of this Court is to enforce, not to nullify, what it decrees. That is all that we do in this case.

WHEREFORE, the writ of certiorari is granted and the resolution of respondent Commission on Elections of February 7, 1980 petitioner Renato U. Reyes disqualified from becoming a candidate and cancelling his certificate of candidacy, and the proclamation of respondent Board of Canvassers declaring Jose A. Enriquez as Mayor-elect of Bongabong, Oriental Mindoro, are hereby nullified, set aside and declared to be without force and effect. The writ of mandamus is granted and respondent Board of Canvassers of Bongabong, Oriental Mindoro, is commanded to proclaim, in accordance with the canvass already terminated, petitioner Renato U. Reyes as Mayor-elect. Thereafter, the case is referred to the respondent Commission on Elections so that it could proceed to pass on the question of the disqualification of petitioner Renato U. Reyes after a hearing to be conducted in accordance with the cardinal requirements of procedural due process. No costs.

Makasiar, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Aquino, J., concurs in the result.

Teehankee, J., concurs in a separate opinion.

Barredo, and Antonio, JJ., are on official leave.

[1] Article XII, C, Section 10 of the Constitution.

[2] The other respondents in this petition for certiorari and mandamus are: The Municipal Board of Canvassers of Bongabong, Oriental Mindoro, Ernesto Liwanag and Jose A. Enriquez.

[3] G.R. No. 52375, January 25, 1980.

[4] G.R. No. 52381, January 26, 1980, Teehankee, J., dissented.

- [5] G.R. No. 52401, January 28, 1980, Teehankee, J., dissented.
- [6] 69 Phil. 635 (1940).
- [7] G.R. No. 52428, February 21, 1980.
- [8] Resolution, February 21, 1980.
- [9] Petition, Factual Background, par. 2.
- [10] Ibid., par. 3.
- [11] Ibid., par. 4.
- [12] Ibid., par. 5.
- [13] Ibid., par. 6.
- [14] Ibid., par. 7.
- [15] Ibid., par. 9.
- [16] Ibid., par. 10.
- [17] Resolution, February 19, 1980.
- [18] Urgent Ex-Parte Motion.
- [19] Resolution, February 28, 1980.
- [20] Resolution, March 17, 1980.
- [21] He was assisted by Assistant Solicitor General Reynato S. Puno and Solicitor Jesus V. Diaz.
- [22] Comment, 4.
- [23] Act No. 1582.
- [24] According to its Section 14, delinquency in the payment of taxes, deprivation of the right to vote as part of the penalty for an offense committed, violation of the oath of allegiance to the United States, taking up arms against it, contributions to subversive organizations, the giving of aid and comfort to such groups, and insanity were the grounds for disqualification. Cf. Sec. 6 of Act No. 1709 and Sec. 1 of Act No. 1726. The amendatory acts all of which became effective the same year are Act No. 1709, Sec. 6; Act No. 1726, Sec. 1 and Act No. 1768, Sec. 1.
- [25] Cf. Section 403. It was thereafter amended by Sec. 2 of Act 3030 (1926).
- [26] Section 2175 of the Revised Administrative Code (1917). Cf. *Pamil v. Teleron*, L-34854, November 20, 1978, 86 SCRA 413.
- [27] Act No. 3387 (1927).
- [28] Ibid., Sec. 403.
- [29] Ibid., Sec. 407.
- [30] Commonwealth Act No. 357 (1938).
- [31] Ibid., Sec. 21.

[32] Ibid., Secs. 24 and 25.

[33] Republic Act 180 (1947).

[34] Ibid., Sec. 29.

[35] Ibid., Sec. 30.

[36] Republic Act No. 6388.

[37] Cf. Sections 25 and 27.

[38] 12 Phil. 30 (1908).

[39] 18 Phil. 501 (1911).

[40] 23 Phil. 238.

[41] Cf. Guzman v. Provincial Board, 48 Phil. 211 (1925); Cecilio v. Belmonte, 51 Phil. 540 (1928); Yra v. Abaño, 52 Phil. 380 (1928); Nuval v. Guray, 52 Phil. 645 (1928); Caesar v. Garrido, 53 Phil. 97 (1929); Tanseco v. Arteché, 57 Phil. 227 (1932); Larena v. Teves, 61 Phil. 36 (1934); De los Reyes v. Solidum, 61 Phil. 892 (1935); Ycain v. Caneja, 81 Phil. 778 (1948); Llamoso v. Ferrer, 84 Phil. 490 (1949); Castañeda v. Yap, 91 Phil. 819 (1952); Gamalinda v. Yap, 93 Phil. 310 (1953); Vilar v. Paraiso, 96 Phil. 659 (1955); Luison v. Garcia, 103 Phil. 453 (1958); Sanchez v. Del Rosario, 111 Phil. 733 (1961); Miralles v. Gariando, 111 Phil. 1091 (1961).

[42] Cf. Moya v. del Fierro, 69 Phil. 199, 204 (1939).

SEPARATE OPINION TEEHANKEE, J.:

I have previously urged that all such pre-election cases seeking to disqualify the winner on the ground of alleged turncoatism should be ordered dismissed after the elections, subject to the filing of an appropriate quo warranto action or election protest against the winner in the appropriate forum (the Comelec for pro-vincial and city officials and the proper Court of First Instance for municipal officials^[1]). This coincides with the President's own view as he was reported in the February 27, 1980 newspapers "to have ordered the lawyers of the KBL [Kilusang Bagong Lipunan] to withdraw all disqualification charges to allow already proclaimed op-position candidates involved in such cases to assume office," re-serving the right to file an election protest (although such Presidential orders seem to have been ignored since I am not aware of any of the numerous disqualification cases before us that have been so withdrawn).

The formula now adopted by the Court in the case at bar as well as in the companion cases of G.R. Nos. 52427 and 52506 (Cesar E. Nepomuceno, et al. vs. Comelec) decided also on this date (May 15, 1980) which in essence reaffirms and follows the Court's resolution of February 21, 1980 in the disqualification case of Mayor Aquilino Pimentel, Jr. of Cagayan de Oro City (G.R. No. 52428) remands the cases to the Comelec (even though the offices involved are municipal offices) as a continuation of the pre-proclamation proceedings but expressly directs that the Comelec hold a full-dress hearing in accordance with due process and give the parties full opportunity to present all evidence relevant to the issue of disqualification of the winner because of alleged turncoatism - which is substantially the same as if the proceedings were an election protest (although not so termed).

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 remanded to the Comelec, whose decision is of course subject to final review

by this Court at the in-stance of either party.

Such a full-dress hearing is necessary and imperative for the following considerations:

- The winning candidate especially after he has received the approbation of the electorate is entitled to due process and a full-dress hearing so that the circumstances relied up-on to sustain the charge of alleged turncoatism may be duly threshed out with confrontation and examination of witnesses and his good faith or bad faith, as the case may be, may be duly de-termined.
- There are a number of vital facts that have to be established and duly taken into consideration in a full-dress hearing, among them the lack of fair notice and suddenness with which the January 30th elections were called when as late as November 16 and November 21, 1979 it was being reported by the newspapers that local elections have been set for December 7, 1980[2], with the President having been reported on November 22, 1979 as noti-fying the Comelec that "local elections will be held either before the end of next year 1980 or in early 1981"[3], until suddenly on December 16, 1979 it was reported that the President asked the Batasang Pambansa to set the local elections for January 30th which was so fixed by the Batasang Pambansa. On January 4, 1980, the deadline for filing of certificates of candidacy, "the President was reported to uphold NP's right to field candidates" stating that "the policy should be to allow fair, free and open fight among the as-pirants from the gubernatorial to the sanggunian position" and that "it is obvious, the President told newsmen, that in most places, the fight will be between the KBL and the NP. That would make the NP the opposition in the coming elections," the President con-tinued.[4]

It is important that all the circumstances and facts be duly brought out because even in the cases of those who were seek-ing an official nomination and affiliation as KBL candidates in the light of the undisputed situation that during this entire period of martial law - going into the 8th year now - the activities of poli-tical parties had been suspended and there was only one dominant organization serving as an umbrella organization which is the KBL which admittedly was organized as a political party only in Decem-ber 1979 after the calling of the elections and that all local offi-cials held office at the pleasure of the President and were exhorted to support the KBL organization and could be removed even before the elections as in fact a number of them were so removed as in the case of the Mandaluyong mayor.

- The question of fairness and equal protection of the laws also comes into serious consideration when we take the case of Assemblyman Edelmiro Amante (Case G.R. No. 52375) whose co ntention before this Court was that he has always been a Nacionalista and his disqualification by the Comelec from run-ning for the office of governor of his home province of Agusan del Sur on the ground that he had been elected as a KBL assemblyman was set aside in the Court's Resolution of January 26, 1980. Yet after his defeat in the elections, he and a number of others who supported or ran as Nacionalista candidates have been accepted back into the KBL ranks in the Batasang Pambansa.
- The cited prohibition against change of political party affiliation must be so construed so as not to collide with the rights guaranteed by the Constitution such as the right of free asso-ciation. As stressed by the Court itself in the Peralta case[5], "a narrow construction may discourage the robust exercise of the right of association guaranteed by the Bill of Rights," and "(I)t is, therefore, necessary at this stage to encourage the emergency or growth of political parties that will truly reflect the opinions and aspirations of our people. The right of individuals to form asso-ciations as guaranteed by the fundamental law, includes the free-dom to associate or refrain from association. In accord with this constitutional precept, it is recognized that no man is compelled by law to become a member of a political party, or, after having become such, to remain a member."
- The Comelec must also squarely address the matter that the KBL finally became a political party only in late

December, 1979, after the sudden calling of the elections for January 30, 1980.

Before then, by the Court's own pronouncements in the Peralta and Laban cases of 1978, the dominant KBL was not a political party but an umbrella organization of all pre-martial law political parties. So, the jockeying and open solicitation of prospective candidates like Assemblyman Amante for a place in the KBL ticket in the January 30, 1980 local elections and his running instead as a Nacionalista partyman in opposition to the KBL candidate was rejected by the Court as a cause for his dis-qualification for alleged turncoatism, *supra*.

In Laban[6], the Court's main opinion expressly acknowledged that "by nominating as its own the candidates of the KBL, the Nacionalista Party merely gave the mass of its lo-ya! and die-hard partymen the opportunity to vote distinctly as Nacionalistas in the coming election, leaving it for the future, when political matters shall have had more time and opportunity to fully develop and firm themselves up in relation to the modes and objectives of the New Society, for each of them to join the party of their choice, assuming the KBL will eventually evolve into a new political party. Until that time comes, it would be ignoring signifi-cant historical realities and practically placing political thought in a straight jacket to recognize the KBL as the exclusive vehicle for the articulation of political ideals."

- The question as to whether P.D. 1661 which par-took of the nature of an implementing legislation and outlawing guest candidacy as published in the newspapers only on January 5, 1980 after the expiration of the January 4, 1980 deadline for filing of cer-tificates of candidacy, could not be justly relied upon to disqualify candidates who were not aware of its provisions since it had not yet been promulgated much less published as of the time they filed their certificates of candidacy; that the P.D. is unquestionably penal in nature and imposes penalties for violators and therefore could not be made to retroact without transgressing the ex post facto provisions of the Bill of Rights; and these questions of substantive due process and the application of the constitutional mandate in Art. XII-C, sec-tion 9 (1) that "bona fide candidates for any public office shall be free from any form of harassment and discrimination" and the ques-tion of real import and meaning of turncoatism such as whether one who after a gap of 9 years of no contested elections runs as an oppo-sitionist as against the overwhelming power and resources of the do-minant party or organization can genuinely be denounced as a turn-coat following the spirit and not the mere letter of the Constitution and of the law, are all issues of great importance and significance that have to be addressed by the Court only after the affected party shall have been given in the first instance a full dress hearing, as the Court has now ordered.

- Lastly, but equally important, 'in the event of an adverse ruling against the winning candidate, the Comelec must take into consideration the prevailing doctrine of Topacio vs. Paredes[7] that the repudiated candidate and loser in the election who succeeds in disqualifying the winner is not entitled to be proclaimed much less to assume office, since he has not received the plurality of the votes cast in the elections. There would result a failure of election, e.g. for mayor in the case of principal petitioner and in such case the elected vice mayor, not the repudiated lower, would assume the of-fice. This appears to be in consonance with the provisions of sec-tion 8, Batas Pambansa Blg. 51 that "In case of a permanent vacancy that arises when a governor, city or municipal mayor fails to qualify [for the office to which he is elected the vice-governor, city vice-mayor or municipal vice-mayor, as case may be, shall as-sume the office."

[1] Sections 188 and 189, P.D. 1296 (1978 Election Code).

[2] Times-Journal issue of Nov. 16, 1979 and Bulletin Today issue of Nov. 21, 1979.

[3] Bulletin Today issue of Nov. 22, 1979.

[4] Daily Express issue of Jan. 4, 1980.

[5] Peralta v. Comelec and related cases, 82 SCRA 30 (March 11, 1978), per Antonio, J.

[6] Lakas ng Bayan v. Comelec, 82 SCRA 196, 211 (March 25, 1978), per Barredo, J.

[7] 23 Phil. 238.

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