

NILO I. ITURIAGA, PETITIONER, VS. COMMISSION ON ELECTIONS AND JUANITO I. RONDARIO, RESPONDENTS.

G.R. No. 52718. April 30, 1985

Ponente: DE LA FUENTE, J.

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DE LA FUENTE, J.:

Petition for certiorari, etc.[1] seeking to set aside Resolution No. 8528 of the Commission on Elections which cancelled the certificate of candidacy of Nilo I. Ituriaga for the position of Municipal Mayor of Malinao, Aklan. He was the incumbent mayor of said municipality when he filed on January 4, 1980 his certificate of candidacy for the same post under the Nacionalista Party. His lone opponent for the same position was respondent Juanito I. Rondario, who was the official Kilusang Bagong Lipunan candidate.

On January 16, 1980, a petition was filed by Jocelyn R. Duero with the respondent Commission to disqualify Ituriaga as such candidate, invoking Section 10, Article XII-C of the Constitution in relation to Section 4, of B.P. Blg. 52 (docketed as PDC Case No. 92). It was alleged therein that "up to the time respondent [Ituriaga] filed his certificate of candidacy under the Nacionalista Party, or at least within six months immediately preceding January 30, 1980, he was affiliated with the Kilusang Bagong Lipunan (KBL) party, the municipal chairman thereof." [2] Attached to said petition, as Annex B, was a photocopy of the "KBL Municipal Chapter Organization submitted to the Aklan KBL Provincial Committee."

In his answer to the petition, therein respondent Ituriaga averred, among other things, that he was elected in 1971 municipal mayor of Malinao, Aklan, under the Nacionalista banner; that he was designated the Chairman of the KBL Municipal Chapter in the 1978 elections for Assemblymen when the KBL was merely an "umbrella organization", not a political party (which together with the Nacionalista Party supported common candidates); that shortly before the announcement of the January 30, 1980 local elections, the Provincial Governor of Aklan, as KBL Provincial Chairman, instructed by radio message all municipal mayors to submit lists of local committees for the KBL; that he complied as a matter of courtesy "but without the slightest thought or intention of becoming a KBL member"; that he never "signed any party affiliation with the KBL nor . . . ever pretended to be such" member; and that he filed his certificate of candidacy in the firm belief that he was a member of the Nacionalista Party.

A similar charge of turncoatism, docketed as PDC Case No. 443, was filed by Herminio Templaza against KBL candidate Rondario. However, only the disqualification case against herein petitioner Ituriaga was acted upon by the respondent Commission before election day. Its brief Resolution No. 8528 dated January 27, 1980, cancelled petitioner's certificate of candidacy as follows:

"It appears that respondent herein was elected Chairman of the KBL Municipal Chapter of Malinao, Aklan, as shown in his report to the Provincial Committee Chairman (Annex 'B'); that while being bonafide and active member of the KBL having been elected therefor and, without having formally resigned therefrom (sic), on January 4, 1980, filed with the Commission on Elections his certificate of candidacy for Mayor of Malinao, Aklan under the Nacionalista Party in violation of the Constitution and other pertinent laws.

"PREMISES CONSIDERED, the Commission, on motion duly seconded, with Commissioner Flores A. Bayot abstaining, RESOLVED to grant the petition and orders that the certificate of candidacy of respondent herein be cancelled."

The Election Registrar of Malinao, Aklan was apprised of petitioner's disqualification on January 28, 1980. On election day, January 30th, the citizens election committees were told to consider as stray votes those cast in favor of a disqualified candidate. Accordingly, the votes for petitioner Ituriaga were not counted.

Petitioner came to know of said resolution only on election day. He immediately filed a motion for reconsideration. He claimed that the disqualification case against him was summarily resolved and he was not accorded the opportunity to be heard; and that "the timing of service of said resolution was unfair" for he was not given the chance "to avail of the ordinary legal recourse and remedies." [3]

On the other hand, since the Commission failed to act on the petition for disqualification of respondent Rondario, the votes cast in his favor were counted and canvassed. However, on January 31, 1980, the respondent Commission sent an urgent telegram to the board of canvassers to withhold the proclamation of respondent Rondario due to the pendency of the said petition.

About three weeks later, on February 20, 1980, since no action was taken on his motion for reconsideration and in anticipation of a move to proclaim his opponent, petitioner Ituriaga filed the instant petition for certiorari, mandamus and injunction to annul and set aside Resolution No. 8528, to compel the Commission to count the votes cast in his favor and to restrain it from proclaiming respondent Rondario. The respondents were immediately required to comment.

On March 6, 1980, the respondent Commission issued the following resolution:

"9451. (PDC Case No. 92). In the matter of the pending case for disqualification filed by JOCELYN R. DUERO against NILO T. ITURIAGA, for Mayor of Malinao, Aklan: On motion duly seconded, the Commission RESOLVED as follows: (a) to order all the citizens election committees of said municipality to reconvene immediately in the Malinao Municipal Building for purposes of counting and tallying on the election returns all the votes obtained by respondent NILO I. ITURIAGA in the January 30, 1980 elections; (b) to order the MALINAO Municipal Board of Canvassers to reconvene immediately in the Malinao Municipal Building for purposes of canvassing the votes obtained by said respondent, and thereafter, to proclaim the winning candidate for Mayor of Malinao, Aklan; and (c) to constitute a Special Action Team to supervise said election processes. The proclamation, however, shall be without prejudice to the continuation of the hearing and ruling on the disqualification of said respondent in accordance with the Commission resolution of February 27, 1980 (Item No. 9318), as well as the final disposition of the appealed case G.R. No. 52718 (Ituriaga vs. Comelec), now pending with the Supreme Court." (Underscoring supplied)

The citizens election committees forthwith reconvened on March 7, 1980, counted and tallied the votes in favor of petitioner Ituriaga and, after canvass, the municipal board of canvassers announced the results showing that petitioner garnered 340 votes more than those cast for the other candidate, Rondario. On the same day, petitioner Ituriaga was proclaimed and immediately thereafter he took his oath of office. On March 8, 1980, the respondent Commission was so informed by radio message sent by the Special Action Team. This was followed by a formal report on March 10, 1980.

On March 10, 1980, however, the respondent Commission issued *motu proprio* another resolution, No. 9466, to set aside the earlier resolution (No. 9451) just quoted, to annul the proclamation of petitioner Ituriaga, and to recognize the "previous proclamation" of respondent Rondario. We quote in full the said resolution:

"9466. (PDC Case No. 92). Considering that there is an order by the Commission dated March 7, 1980 to hold

in abeyance implementation of Comelec Resolution No. 9451, in view of the pendency of the Supreme Court Case (G.R. No. 52718) in the matter of the disqualification of Nilo Ituriaga, and considering further that the Special Action Team, notwithstanding said order to hold implementation of said resolution, the Special Team continued to enforce Resolution No. 9451, the Commission, on proper motion, duly seconded, RESOLVED as it hereby RESOLVES as follows:

1. To set aside Comelec Resolution No. 9451;
2. To set aside whatever action the Special Action Team has taken in implementing Resolution No. 9451;
3. To annul the proclamation that has been made by or upon instance of the Special Action Team on March 7, 1980; and
4. To recognize the previous proclamation made by the Municipal Board of Canvassers, without prejudice to whatever legal remedies may be taken by the aggrieved party or parties."

It appears that the order of March 7, 1980, referred to in the resolution, directed the Special Action Team to "hold in abeyance" implementation of Resolution No. 9451. It was sent by radio and was received by the Philippine Constabulary Command at Kalibo, Aklan, at "4:45 P.M., 8 March 1980"[4] It was late. As stated by Atty. Leones of the Special Action Team, per his reply sent at "5:30 P.M." on March 8 to the respondent Commission, they "have proclaimed NP candidate for Mayor Malinao yesterday..."

This development impelled petitioner Ituriaga to file with this Court on March 15, 1980, an urgent motion for a temporary restraining order and/or writ of preliminary injunction to enjoin enforcement of Resolution No. 9466. It was alleged that "in revoking, without notice and hearing its Resolution No. 9451 ... and all acts done by its own Special Action Team pursuant thereto and the proclamation of the winning candidate", the Commission acted "high-handedly, arbitrarily, capriciously and whimsically in utter disregard of the constitutional guarantee of due process". Said motion was granted on March 20, 1980. We restrained the respondent Commission "from enforcing" the said resolution and also the private respondent, "from assuming the position of Mayor of Malinao, Aklan, or if he has already assumed the said position, to CEASE and DESIST from continuing to discharge the functions of such office."

Petitioner maintains that the finding that he was "elected" KBL Municipal Chairman of Malinao, Aklan, is not supported by any evidence. The list submitted to the Provincial Governor was a proposed list of committee chairmen and members which included names of people who, by virtue of their positions as incumbent officials, should be in the local set-up of the KBL as an umbrella organization, as they did in the 1978 elections. Thus, being the incumbent mayor, he and all the incumbent barangay captains, irrespective of party affiliation, were designated chairmen in the municipal/barangay level.

It results, then, that Resolution No. 9451, which in effect granted certain reliefs sought by petitioner Ituriaga from this Court (except that concerning Resolution No. 8528 which cancelled his certificate of candidacy) and rendered moot the case with respect thereto, remains a valid order of the respondent Commission in PDC Case No. 92. The proclamation of petitioner Ituriaga, pursuant to its terms, is beyond question also valid, "without prejudice to the continuation of the hearing and ruling on the disqualification of said respondent ... as well as the final disposition of the appealed case G. R. No. 52718 ... now pending in the Supreme Court."

The issue to resolve, now, is whether or not the respondent Commission gravely abused its discretion when it issued the questioned resolution cancelling petitioner Ituriaga's certificate of candidacy on the ground of turncoatism. It is contended by respondents that said resolution was supported by substantial evidence. Petitioner maintains that it is not so, disputing the finding that he was "elected" KBL municipal chairman. The "list", cited as factual basis thereof, was submitted to the Provincial Governor, as earlier noted, when the KBL was still an

"umbrella organization", etc.

We find that there was, indeed, grave abuse of discretion amounting to lack or excess of jurisdiction, the resolution in question having been issued without the benefit of a hearing. It is well-settled that to disqualify a candidate on the ground of turncoatism, a full-dress hearing with due observance of procedural due process^[5] cannot be dispensed with. It appears from the records and submissions that no such hearing was ever conducted by the Commission before the issuance of the assailed resolution. It was a summary adjudication on the pleadings, consisting only of the petition for disqualification, its annexes and the petitioner's answer. This Court has already pointed out that it is not enough to give the respondent the opportunity to answer the petition for disqualification; there must be an actual hearing of the case where his defenses can be "fully presented and assessed."^[6] In *Reyes vs. Commission on Elections*, as the questioned resolution was predicated merely on the pleadings and there was no formal hearing,^[7] that resolution was set aside and the case ordered remanded for further proceedings, in obedience to the authoritative command in *Ang Tibay vs. CIR*^[8] to administrative agencies exercising quasi-judicial functions for the observance of the cardinal requirements of due process: the most important of which, being the right to be heard and the necessity for substantial evidence to support its decision. The same approach was followed in *Pimentel* where this Court, not satisfied that petitioner was fully heard, directed the Commission to hear anew the disqualification case by allowing the parties to present all evidence relevant to settle all the issues involved.^[9]

Resolution No. 9466, as we see it, produced no legal effect whatsoever insofar as it was intended to revoke or set aside the earlier resolution authorizing the citizens election committees and municipal board of canvasser to reconvene for purposes of counting/tallying/canvassing the votes for candidate Ituriaga, herein petitioner, and "to proclaim the winning candidate", all these matters having been implemented before the radio message of March 7, 1980 (to "hold in abeyance implementation" of that resolution) was received by the Commission's Special Action Team. The proclamation of petitioner Ituriaga as duly elected Municipal Mayor of Malinao was, then, a fait accompli which could not be summarily annulled or swept aside by the respondent Commission. Its annulment thereafter can be done only after notice and hearing conducted with the observance of due process, as held by this Court in *Pimentel* and other cases. Resolution No. 9466 became functus officio soon after its issuance.

Parenthetically, the certificate of candidacy of petitioner was cancelled on January 27, 1980, or three days before election day - a fact which came to the knowledge of petitioner on election day as the voting was about to be closed. At that time, for undisclosed reasons, the respondent Commission had not acted on the other disqualification case against respondent Rondario, thereby allowing the votes cast in his favor to be counted and canvassed. The Commission's actuations, apparently, were tilted in favor of one party. In short, there was unfairness to the petitioner and much to be desired in terms of fair play.

At this point of time, however, remanding this pre-proclamation case to the respondent Commission for a full-dress hearing would be a time-consuming effort, although essential to the task of adjudication. An electoral protest or quo warranto proceeding filed by the proper party would serve just as well, if not better^[10] for the purpose of an adjudication on the issue of disqualification.

WHEREFORE, the writ of certiorari is granted. Resolution No. 8528 cancelling the certificate of candidacy of petitioner Ituriaga is hereby annulled and set aside. This is without prejudice to the disqualification issue being raised by the party concerned in appropriate proceedings before the proper forum, if so desired.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Abad Santos, Melencio-Herrera, Plana, Relova, Gutierrez, Jr., Cuevas, and Alampay, JJ., concur.

Aquino and Escolin, JJ., no part.

Concepcion, Jr., J., on leave.

[1] mandamus (to compel the Commission to count the votes in his favor) and injunction (to restrain the proclamation of respondent Rondario); pages 1 to 11, rollo.

[2] page 15, *ibid*.

[3] page 21, *ibid*.

[4] Annex G, page 38, rollo.

[5] *Pimentel vs. Comelec*, G. R. 52428, Feb. 21, 1980; *Potencion vs. Comelec*, 99 SCRA 595; *Gonzales vs. Comelec*, 101 SCRA 752; *Gomez vs. Comelec*, 120 SCRA 621.

[6] *Goboy vs. Comelec*, 126 SCRA 441, citing *Singco vs. Comelec*, 101 SCRA 420.

[7] 97 SCRA 500.

[8] 69 Phil. 635.

[9] G. R. No. 52428; also in *Singco vs. Comelec*, *Farinas vs. Comelec* (106 SCRA 202), *Gonzales vs. Comelec*, and lately in *Goboy vs. Comelec*, *supra*.

[10] *Villegas vs. Comelec*, 99 SCRA 582.

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