

DAVID Q. SANDALO, PETITIONER, VS. COMMISSION ON ELECTIONS AND PACIFICO D. ALBURO, RESPONDENTS.

G.R. No. 52737. August 31, 1981

Ponente: AQUINO, J.

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AQUINO, J.:

In the election of January 30, 1980, Pacifico D. Alburo was the official candidate of the Kilusang Bagong Lipunan for mayor of Tubay, Agusan del Norte. David Q. Sandalo was the official candidate of the Nacionalista Party.

On January 16, 1980, Alburo (he was the incumbent mayor) filed with the Commission on Elections a petition to disqualify Sandalo on the ground of turncoatism. Sandalo answered the petition. The case was not decided before the election.

On January 31, 1980, or the day after the election, the municipal board of canvassers proclaimed Sandalo as the duly elected mayor with a margin of 455 votes over his opponent. He obtained 2,439 votes. Alburo was credited with 1,984 votes.

However, on February 16, 1980, the Comelec in its Resolution No. 9160 set aside the proclamation, denied due course to Sandalo's candidacy and ordered the municipal board of canvassers to proclaim Alburo as mayor.

The Comelec found after hearing that Sandalo was a member of the KBL as shown in his certificate of affiliation dated December 26, 1979, that he was a member of the KBL's municipal committee and that on January 4, 1980 he filed his certificate of candidacy as a member of the Nacionalista Party.

Sandalo in this petition for certiorari filed on February 23, 1980 questions the Comelec's resolution disqualifying him for the position of mayor. On February 26, this Court issued a restraining order stopping the proclamation of Alburo as mayor. (Justices Aquino and Guerrero voted against the issuance of that restraining order). Sandalo assumed the position of mayor on March 19, 1980 (p. 102, Rollo).

The issue is whether the Comelec committed a grave abuse of discretion in disqualifying Sandalo on the ground of turncoatism as provided for in section 10, Article XII(C) of the Constitution in relation to section 7 of Batas Pambansa Bilang 52.

We hold that the Comelec correctly decided that Sandalo, a political opportunist, was a turncoat and was disqualified to run for mayor. Its finding that Sandalo affiliated with the KBL and that nine days later he switched to the Nacionalista Party is binding and conclusive on this Court.

This case is similar to *Gabatan vs. Commission on Elections*, G.R. No. 52381, January 25, 1980 and *Evasco vs. Commission on Elections*, G.R. No. 52401, January 28, 1980, where, under facts almost identical to the facts of this case, a candidate who affiliated with the KBL was held to be disqualified to run as a Nacionalista. See *Santos vs. Commission on Elections*, G.R. No. 52390, March 31, 1981.

Sandalo's contention that the Comelec should have re-solved the disqualification case on or before mid-day of election day is not supported by section 28 of the 1978 Election Code which refers to substitute candidates in case of death, withdrawal or disqualification of candidates.

WHEREFORE, the petition is dismissed and the restraining order is lifted. The Comelec's resolution of February 16, 1980 ordering Alburo's proclamation is upheld. Costs against the petitioner.

SO ORDERED.

Barredo, Makasiar, Concepcion, Jr., Fernandez, Guerrero, and De Castro, JJ., concur.

Fernando, C.J., did not take part.

Teehankee, J., dissents in a separate opinion.

Abad Santos, J., on leave.

Melencio-Herrera, J., in the result.

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SEPARATE DISSENTING OPINION

TEEHANKEE, J.:

The majority decision wrongfully brands the opposition (NP) winner petitioner David Q. Sandalo, of the mayoralty election on January 30, 1980 in the small town of Tubay, Agusan del Norte (the first local election held under martial law since 1971), as "a political opportunist a turncoat."

Sandalo was duly proclaimed the duly elected mayor of Tubay on January 31, 1980 with a decisive margin of 455 votes against his KBL opponent, respondent Pacifico D. Alburo (2439 - 55% vs. 1,984 - 45%).

The Comelec had taken no action on the petition for disqualification case for alleged turncoatism filed by the loser Alburo. But on February 16, 1980 after the lapse of the 10-day period for the loser to file an election protest, the Comelec issued its Resolution "setting aside all the effects of the proclamation of Sandalo and ordering the canvassers who had finished their task on the day after election day with Sandalo's unquestioned proclamation "to proclaim [defeated candidate] Alburo as the duly elected mayor."

The Comelec resolution was based on the flimsiest of evidence with Sandalo at the hearing emphatically denying that he ever signed the certificate of affiliation with the KBL at the organization meeting of December 3, 1979 for he was then in Manila having a dental checkup and specifically averred in his answer that "since he joined politics in 1951 when he ran and won as the Municipal Mayor of Tubay, Agusan del Norte up to the time he won in 1971 as member of the Provincial Board of Agusan del Norte he has been a consistent member of the Nacionalista Party." But the Comelec, as against these unresolved conflicting issues of fact and without making any findings of fact, resolved to summarily act and grant after the elections the moot petition for disqualification of Alburo, and the majority would now hold this Comelec action as "binding and conclusive on this Court."

Upon Sandalo's filing on February 23, 1980 of the petition at bar, a majority of the Court voted to issue a restraining order against enforcement of the Comelec resolution,[1] with a member remarking then that "after the election, Comelec should go easy about disqualifying the winner, which matter is within the CFI jurisdiction

[involving a municipal office]."

At any rate, a majority of the Court has now voted to dis-miss Sandalo's petition and to lift the restraining order. I am con-strained to dissent because:

1. The majority decision is contrary, without any explana-tion or distinction, to the Court's unanimous doctrine laid down in numerous decisions penned by the Chief Justice since *Venezuela vs. Comelec*[2] as far back as July 25, 1980 to *Faderanga vs. Comelec*[3] on June 26th of this year that "all such pre-proclamation controversies not submitted to this Court or resolved before election day, January 30, 1980, should be dismissed without prejudice to such ground being passed upon in a proper election protest or quo warranto proceeding." [4] The Court laid down this doctrine and rule of law precisely to rid its dockets of all such pre-proclamation controversies and in the Chief Justice's language in *Arcenas vs. Comelec*[5] "ought to have fur-nished guidance," but almost two years after the elections here comes the decision at bar ignoring and disregarding the same, contrary to the Court's own injunction in the cited case that "to upset the existing conditions x x x under the circumstances would not be conducive to stability. On the other hand, to follow the authoritative pronounce-ment of this Court and thus put an end to the pre-proclamation contro-versy, reserving the right to private respondents to pursue the mat-ter in the appropriate election protest or quo warranto petition as the case may be, would be more in keeping with the orderly ways of the law." Coincidentally, the President himself as far back as February 27, 1980 as reported in the metropolitan newspapers, apparently recognizing the need of respecting the sovereign will of the electorate had directed the withdrawal by KBL losers of all disqualification cases against the opposition survivors, without prejudice to their filing an election pro-test - but apparently to no avail.

2. The disposition of the case at bar does not jibe with the precedents of *Gonzales vs. Comelec*[6] and *Fariñas vs. Comelec*[7] decided only last July, wherein the Court unanimously set aside the Comelec resolutions of disqualification of the winners. In *Gonzales*, which is fully applicable here, *mutatis mutandis*, des-pite the winner Gonzales of the opposition Bicol Saro having right on election day let his wife file her certificate of candidacy for the same post of mayor of Polangui, Albay in substitution for himself because of his disqualification, the Court ruled that "the release of the disqualification resolution on the eve of the election was quite unfair and disconcerting to Gonzales. For that reason, we cannot sustain the view of the Solicitor General that, because Gonzales allowed his wife to substitute for him, he is estopped to question the resolution disqualifying him. He was constrained to resort to any expedient in order that the effort and money spent in the cam-paign would not be wasted," since Comelec "denied his motion for reconsideration in a somewhat high-handed or cavalier manner. It did not bother to resolve the factual issues raised in the affidavits supporting his motion for reconsideration. There is no finding as to when the KBL became a duly accredited political party." In *Fariñas*, the Court set aside the "midnight disqualification resolution therein" because the Comelec hearing was as in the case at bar "summary in character" and "due to the numerous pending disqualification cases and the nearness of the election, the Comelec did not have ample time and opportunity to receive evidence in this case and to deliberate thereon. Its abbreviated resolution is an indication that the case had not been thoroughly threshed out."

3. The majority decision without explanation nor overruling the unquestioned doctrine in election cases that the disqualification of the winner does not entitle the defeated candidate to claim the contested seat has simply "upheld" the Comelec resolution ordering the canvassing board to proclaim the loser Alburo as the "duly elected mayor" when in fact Alburo was rejected and repudiated by the electorate. This action violates the express mandate of the 1980 local elec-tion law on succession that where the elected mayor "fails to qualify ... the vice mayor ... shall assume the office." [8] It also disregards the unbroken line of jurisprudence which is the law of the land since the 1912 case of *Topacio vs. Paredes*[9] that "the effect of a decision declaring a person ineligible to hold an office is only that the election fails entirely," that "the wreath of victory cannot be transferred" [10] from

the disqualified winner to the repudiated loser because the law then as now "only authorizes a declaration of election in favor of the person who has obtained a plurality of votes"[11] and "does not entitle the candidate receiving the next highest number of votes to be declared elected. In such case, the electors have failed to make a choice and the election is a nullity."[12]

4. Petitioner complains with reason and justification in his petition that "to allow private respondent to be installed as mayor-elect despite the resounding rejection by the electorate in the last election is tantamount to dis-enfranchising the whole electorate of Tubay, Agusan del Norte, without any fault on their part. This situation undermines and destroys the essence of democracy. It exalts legalism at the expense of substantial justice and stifles and curtails the sovereign will of the people to elect their own leaders. This simply amounts to a situation wherein it is not the will of the people but the Comelec that elects the mayor."[13]

5. The people's will and undeniable right to have officials of their unfettered choice should be respected, as stressed by the now Chief Justice in *Badelles vs. Cabili*.^[14] The Court has long consistently ruled that "after the termination of the election, public interest must be made to prevail over that of the defeated candidate."^[15] For brevity's sake, I reproduce the citation of authorities on this point and the other reasons and considerations extensively set forth in my separate dissenting opinion in the *Ticzon* disqualification cases of San Pablo City^[16] which are equally applicable in the case at bar.

[1] The majority vote then for issuance of a restraining order was cast by Fernando, C.J. and Teehankee, Barredo, Antonio, Fernandez, Abad Santos, De Castro and Melencio Herrera, JJ. Aquino and Guerrero, JJ. voted against and Concepcion Jr., J. reserved his vote.

[2] G.R. No. 53532.

[3] G.R. No. 55938.

[4] *Aguinaldo vs. Comelec*, G.R. No. 53953, Jan. 5, 1981.

[5] G.R. No. 54039, Nov. 28, 1980.

[6] G.R. No. 52789, Dec. 19, 1980, per Aquino, J.; emphasis supplied.

[7] G.R. No. 52431, July 30, 1981, per Aquino, J.; emphasis supplied.

[8] Sec. 8 of Batas Pambansa Blg. 51 provides:

"SEC. 8. Succession to the office of the Governor, City or Municipal Mayor. - In case of a permanent vacancy that arises when a governor, city or municipal mayor refuses to assume office, fails to qualify, dies, is convicted by final judgment of a crime involving moral turpitude, resigns, is permanently incapacitated, or has been absent without authorization for more than three (3) consecutive months, the vice-governor, city vice-mayor or municipal vice-mayor as the case may be, shall assume the office x x x."

[9] 23 Phil 238 (1912).

[10] *Luison v. Garcia*, 103 Phil 457 (1958).

[11] *Vilar v. Paraiso*, 96 Phil 664 (1955)

[12] *Llamaso v. Ferrer*, 84 Phil 490 (1949).

[13] At page 12 thereof.

[14] 27 SCRA 121 (1969).

[15] De Guzman v. Board of Canvassers, 48 Phil 211 (1925), citing Lino Luna v. Rodriguez, 39 Phil 208 (1918).

[16] Ticzon v. Comelec, G.R. Nos. 52451 and 52678, March 31, 1981.

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