

EDITO GOBOY, PETITIONER, VS. COMELEC AND ANICETO FERNANDEZ, JR., RESPONDENTS.

G.R. No. 52765. December 29, 1983

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

This petition for certiorari, mandamus and injunction was filed by petitioner to seek the annulment of Resolution No. 8916 of the Commission on Elections dated February 5, 1980 cancelling his certificate of candidacy for municipal mayor of Tangalan, Aklan.

Petitioner, a Nacionalista candidate, was elected Mayor of said town in the 1980 elections. He garnered 2,320 votes over his opponents Aniceto Fernandez, Jr., a KBL aspirant and Pedro C. Fuentes, an independent candidate, who obtained 2,048 and 27 votes, respectively.

On February 8, 1980, the Board of Canvassers proclaimed him Mayor of Tangalan, Aklan. It appears, however, that earlier, the COMELEC in its Resolution No. 8916 dated February 5, 1980 cancelled his certificate of candidacy, in view of the petition for disqualification for alleged turncoatism filed by one Anton T. Estrada on January 14, 1980 who claimed that up to the time he filed his certificate of candidacy under the NP or at least within six (6) months immediately preceding January 30, 1980, he was affiliated with the KBL, as municipal chairman thereof.

On February 14, 1980, the COMELEC issued ex-parte an order directing the Municipal Board of Canvassers to reconvene and proclaim respondent Aniceto Fernandez, Jr. as the duly elected mayor of the town of Tangalan.

Petitioner had filed a motion for reconsideration of the resolution of February 5, 1980, but since no action on the said motion was taken by the COMELEC, even as the date fixed by law for the assumption of office drew closer, petitioner filed the instant petition, claiming that the COMELEC committed an abuse of discretion in issuing the aforesaid resolution. He claimed that he was denied due process of law as he was not afforded any formal hearing. He also claimed that said resolution in effect disregards the sovereign will of the people and disregards the fact that Estrada did not reiterate his petition against petitioner as required by Resolution No. 8584 of the COMELEC, which failure should be deemed as abandonment of petition for disqualification.

On February 29, 1980, this Court issued a temporary restraining order enjoining respondent from assuming the Office of the Mayor.

On March 28, 1980, petitioner filed a motion for temporary restraining order and/or writ of preliminary injunction, alleging that the COMELEC, on March 6, 1980 adopted Resolution No. 9450 confirming the proclamation of petitioner; that, however, on March 10, 1980, the COMELEC issued another Resolution No. 9467, setting aside its Resolution No. 9450 and recognizing the previous proclamation of respondent subject to the temporary restraining order issued by the Supreme Court; that the aforesaid acts of the COMELEC confused the officials and employees of the municipal government of Tangalan, so much so that the Provincial Treasurer of

Aklan has directed the municipal treasurer not to allow petitioner to sign the payroll of the officials and employees of the municipality and to get his salary. Thus, this Court on April 10, 1980, issued another temporary restraining order, restraining the COMELEC from enforcing its Resolution No. 9467 dated March 10, 1980 which would, among others, set aside its previous Resolution No. 9450 confirming petitioner's proclamation.

There is clearly a violation of petitioner's right to due process. The questioned resolution of the COMELEC was based merely on the pleadings, consisting of only a petition for disqualification and petitioner's answer thereto, and without petitioner having been accorded the right to be fully heard in his defense. As We have pointed out in the case of *Singco v. COMELEC*,^[1] it is not enough that petitioner was given the opportunity to answer the petition for disqualification. There must be an actual hearing of the case where his defense could be presented and assessed. This is to comply with the cardinal requirements of procedural due process, the most prominent of which, according to Mr. Chief Justice Enrique M. Fernando, in *Reyes v. COMELEC*,^[2] is the right to be heard.

Since there has already been an election and a proclamation of petitioner, this case to borrow the phrase of the Chief Justice in *Potencion v. COMELEC*,^[3] cannot with precision be considered as a pre-proclamation controversy. As in the cases of *Potencion*, *Singco* and "*Gonzales v. COMELEC*,"^[4] it is more fitting to return this case to the COMELEC to avoid the long delay in the disposition of this case. This would be also 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."

WHEREFORE, in view of the foregoing, the COMELEC's resolutions on February 5, 1980 and March 10, 1980 are hereby reversed and set aside.

The COMELEC is directed to hear anew the disqualification case by allowing petitioner Goboy to present his evidence and respondent Fernandez to present additional evidence. After hearing, the COMELEC should render the appropriate decision as law and justice may require.

SO ORDERED.

Aquino, Conception Jr., Guerrero, Plana, Relova and Gutierrez, Jr., JJ., concur.

Fernando, C. J. and Escolin, J., took no part.

Teehankee, J., concurs and dissents in separate opinion.

Makasiar, J., in the result.

Abad Santos, J., I concur with respect to para. 1 of the judgment; I reserve my vote with respect to para. 2.

Melencio-Herrera, J., In the result re para. 2 of dispositive portion. I reserve my vote to para. 2.

[1] 101 SCRA 420.

[2] 97 SCRA 500.

[3] 99 SCRA 595.

[4] 101 SCRA 752.

CONCURRING AND DISSENTING

TEEHANKEE, J.,

I concur with the judgment setting aside the questioned resolution of the COMELEC, which, in violation of the cardinal requirements of due process, would have arbitrarily and summarily disqualified petitioner (on grounds of alleged turncoatism) as the duly elected and proclaimed mayor of Tangalan, Aklan in the last elections.

The Court's judgment correctly finds that since there has already been an election and proclamation of petitioner, the preelection disqualification case "cannot with precision be considered as a pre-proclamation controversy," citing the cases of Potencion, Singco and Gonzales.[*]

I dissent, however, from the second part of the Court's judgment returning the case to the Comelec "to hear anew the disqualification case" for the same reasons and considerations stated by me in my separate opinions in the cited cases of Potencion, Singco and Gonzales which are hereby reproduced by reference for brevity's sake.

Suffice it to state that the cited principle has since been affirmed and reaffirmed in a continuous host of cases, mostly penned by the Chief Justice, the latest of which was decided on this very month in G.R. No. 57219-20, entitled "Ramon B. Resurreccion, et at. vs. Commission on Elections, et al. " wherein a unanimous Court once again held that "this petition falls squarely within the authoritative Sande Aguinaldo doctrine.[1] As therein set forth: Since *Venezuela v. Commission on Elections*, this Court has invariably adhered to the principle that after the holding of the January 30, 1980 election, and a proclamation thereafter made, a petition to disqualify a candidate based on a change of political party affiliation within six months immediately preceding or following an election, filed with this Court after January 30, 1980, arising from a pre-proclamation controversy, should be dismissed without prejudice to such ground being passed upon in a proper election protest or quo warranto proceeding. Where, however, such constitutional provision had been seasonably invoked prior to that date with the Commission on Elections having acted on it and the matter then elevated to this Court before such election, the issue thus presented should be resolved.[2] Since its promulgation on January 5, 1981, such a principle was followed subsequently in the following cases: *Laguda v. Commission on Elections*;^[3] *Agcaoili, Jr. v. Santos*;^[4] *Mitmug v. Commission on Elections*;^[5] *Jagunap v. Commission on Elections*;^[6] *Mogueis, Jr. v. Commission on Elections*;^[7] *Faderanga v. Commission on Elections*;^[8] *Pasion v. Commission on Elections*;^[9] *Mangca v. Commission on Elections*;^[10] *Disini v. Commission on Elections*;^[14] and *Robes v. Commission on Elections*. "[12] Following this controlling doctrine, it is too late in the day to return the pre-proclamation disqualification case to the Comelec, since the election had already been held and the petitioner was elected and proclaimed as the town mayor. Since his adversary does not appear to have filed the corresponding election protest within the statutory period, a final FINIS should now be written to this case.

As I have previously written in my separate opinions in the above cases,^[13] only "(I)n this wise (would) this Court's dockets 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, 10 months after the holding of the elections!);^[14] 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)."

[*] see Potencion, 253 Phil. 12; Siogco, 255Phil.328 and Gonzales, 256 Phil. 208.

[1] G.R. No. 53953, January 5, 1981, 102 SCRA 1.

[2] Ibid., 3.

[3] G.R. No. 53747, February 20, 1981, 102 SCRA 857.

[4] G.R. No. 52791, February 26, 1981, 103 SCRA 350.

[5] G.R. No. 54082, Mar. 24, 1981, 103 SCRA 455.

[6] G.R. Nos. 53062 & 53345, Apr. 24, 1981, 104 SCRA 204.

[7] G.R. No. 53376, May 26, 1981. 104 SCRA 476.

[8] G.R. No. 55938, June 26, 1981, 105 SCRA 123.

[9] G.R. No. 54151, Nov. 16, 1981, 109 SCRA 238.

[10] G.R. Nos. 58309-10, Feb. 25, 1982, 112 SCRA 273.

[11] G.R. No. 52502, Dec. 30, 1982, 119 SCRA 511.

[12] G.R. No. 63130, June 28, 1983, 123 SCRA 193.

[13] G.R. No. 52830, Singco v. Comelec (Nov. 28 , 1980).

[14] It should be noted that 4 years have already elapsed now since that local elections of January 30, 1980.

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