

ROMEO S. GONZALES, PETITIONER, VS. COMMISSION ON ELECTIONS, GOVERNOR FELIX S. IMPERIAL, JR. AND IRENEO T. SALES, JR., RESPONDENTS.

G.R. No. 52789, December 19, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

This is a disqualification case based on turncoatism wherein petitioner Romeo S. Gonzales claims that he was denied due process by the Commission on Elections. The factual background is as follows:

1. Gonzales, the Nacionalista vice-mayor of Polangui, Albay, alleged that he became a member of the Bicol Saro Party on April 7, 1978 when the election for members of the Batasang Pambansa was held (p. 62, Rollo).
2. On November 22, 1979, he received a notice from the mayor of Polangui enjoining him "to attend a very important conference" at the cockpit at eight o'clock in the morning of November 24, 1979. The notice was also sent to the members of the Sangguniang Bayan and the barangay captains. It was not specified therein that the purpose of the meeting was to organize the local chapter of the Kilusan ng Bagong Lipunan (p. 54, Rollo).
3. Gonzales attended the conference. The presiding officer was Governor Felix S. Imperial, Jr. Gonzales signed an attendance list. He said that he was not aware that the conference would be an organization meeting of the KBL chapter in Polangui. He averred that he did not speak at the meeting and that respondent Imperial even commented that Gonzales was being discreet for remaining silent.
4. Gonzales supported that averment with his own affidavit and the affidavits of six persons who attended the meeting (pp. 55-61, Rollo). Gonzales said that in that meeting he did not formally affiliate himself with the KBL, he did not take his oath as a KBL member and he was not even invited to be a member of that party.
5. Respondent Imperial, controverting the assertions of Gonzales, alleged that those who attended the meeting were duly apprised that it was a KBL organization meeting. Before Imperial's arrival at the meeting, Gonzales allegedly announced to those present that if he would not be selected as the KBL official candidate for mayor he would run as an independent candidate, pointing to his red T-shirt as a sign that he would fight all comers. These allegations were attested by the affidavit of the mayor, the joint affidavit of the incumbent vice-mayor and five kagawads and the joint affidavit of twenty barangay captains (pp. 78-81 and 115-120, Rollo).
6. The minutes of the meeting disclose that Imperial explained to all those present that its purpose was to organize the KBL municipal committee in Polangui. He explained the rules of the KBL. Those present elected the chairman, secretary, treasurer and four board members of the committee. The elected officers took their oath (Exh. A, pp. 82 and 121, Rollo).
7. On January 4, 1980, Gonzales filed his certificate of candidacy as an official candidate for mayor of the Bicol Saro Party (p. 27, Rollo). (In the Comelec's records Gonzales was listed as an independent candidate but in the list of the provincial election registrar, Gonzales appears to be the official candidate of the Bicol Saro Party, pp. 122

and 124, Rollo).

On January 11, 1980, Imperial as KBL provincial chairman filed with the Comelec a petition to disqualify Gonzales on the ground that he (Gonzales) had changed his political party from KBL to the Bicol Saro Party (PDC Case No. 51).

8. The petition was set for hearing on January 17. At the instance of Gonzales, it was reset for January 18, when he filed his answer. On that day, Imperial presented as evidence the aforementioned minutes of the KBL organization meeting (Exh. A) and the attendance list signed by Gonzales (Exh. A-1). Gonzales did not present any evidence but his counsel made the observation that the issues were joined by the filing of Gonzales' answer (pp. 178 and 204, Rollo). That observation might mean that Gonzales' counsel expected that another hearing would be set for the reception of his evidence.

9. A week later, or on January 25, the Comelec issued a resolution disqualifying Gonzales for having changed his political party affiliation within six months prior to the election. The resolution reads:

"In the matter of the sworn petition dated January 11, 1980 filed with the Commission, petitioner Felix S. Imperial, Jr. seeks to disqualify respondent Romeo S. Gonzales from running for the position of Municipal Mayor for Polangui, Albay, under the banner of Bicol Saro Party, a duly accredited political party, on the ground that notwithstanding his membership in the KBL, he filed on January 4, 1980 his certificate of candidacy for said position under the Bicol Saro Party, in violation of the provisions of Section 10, Article XII(C) of the Constitution as well as Presidential Decree No. 1661.

"In support of respondent's membership in the KBL, the petitioner submitted as evidence Exhibit 'A' which shows the minutes of the reorganizational meeting of KBL Municipal Chapter of Polangui, Albay on November 24, 1979, and the personal attendance of respondent in said meeting as proven by his own signature in the attendance list (Exhibit A-1) duly certified by the Acting Secretary of the KBL Municipal Chapter.

"Considering the respondent's participation in the aforesaid Municipal Chapter Reorganizational meeting, proven by his personal attendance thereof, and there being no sufficient evidence to the contrary, the Commission is convinced that respondent is, for all intents and purposes, a member of the KBL and therefore, RESOLVED not to give due course to the certificate of candidacy of respondent Romeo S. Gonzales pursuant to the provisions of the Constitution and the Presidential Decree No. 1661, as amended." (p. 12, Rollo.)

10. The election registrar of Polangui publicized the said resolution on January 29 and 30, 1980. Gonzales claims that he had never been furnished up to this time with a copy of that resolution. He came to know of it on January 29 when the election registrar announced it over the public-address system.

11. Through the same medium, he allegedly made a counter-announcement in the morning of January 30 that the resolution was not yet final and that he was still a candidate.

12. At this juncture, it should be stated that, according to the respondents, at eleven forty-five in the morning of election day, January 30, 1980, Gonzales allowed his wife Virginia R. Gonzales to file her certificate of candidacy to substitute for him as the Bicol Saro Party's candidate for mayor (pp. 102 and 122, Rollo). According to Gonzales, the local election registrar did not give due course to his wife's candidacy (p. 143, Rollo).

13. After the canvass of the votes, the board of canvassers proclaimed Ireneo T. Sales, Jr., the KBL candidate, as the duly elected mayor. The votes cast in favor of Gonzales were not counted because he was considered disqualified. Sales took his oath of office on March 2, 1980.

14. On February 1, Mrs. Gonzales filed with the Comelec a petition to suspend or annul the canvass and the proclamation of Sales (PP No. 27). The Comelec in its resolution of February 21 ruled that Mrs. Gonzales was not

en-titled to block-voting benefits because she could not be considered an official candidate of the Bicol Saro Party. At most, she was an "independent candidate" (p. 125, Rollo).

15. Mrs. Gonzales on February 9, 1980 intervened in Election Case No. 5 of the Court of First Instance of Albay, Saquido vs. Ibarretta (p. 103, Rollo). However, she was replaced as intervenor by Gonzales himself because the lower court held that Mrs. Gonzales was never a candidate for mayor (p. 144, Rollo). Gonzales has a pending election protest against Sales (p. 145, Rollo), which is subject to the outcome of this case.

16. According to Gonzales, the tallies made by the watchers of the Bicol Saro Party showed that he garnered 9,175 votes while Sales obtained 9,044 (pp. 5 and 53, Rollo). Respondent Imperial points out that Gonzales' arithmetic is all wrong. The correct sum of the figures presented by Gonzales is 8,274 votes for him and that means that Sales won the election by 770 votes (p. 113, Rollo).

Imperial also pointed out that the alleged recount of votes made in the lower court, wherein according to Gonzales he won by 253 votes because he obtained 9,209 votes as against 8,956 votes for Sales (pp. 163-165, Rollo) is a spurious document which was presented to mislead this Court (p. 175, Rollo). This is refuted in the affidavit of two members of the committee of revisors (p. 237, Rollo).

17. On February 21, 1980, Gonzales filed with the Comelec a motion for the reconsideration of the resolution of January 25, 1980 denying due course to his certificate of candidacy on the ground of turncoatism. His motion was denied on the following day. The denial came to his knowledge on February 27. Two days later, he filed in this Court his petition for certiorari.

The issue is whether the Comelec committed a grave abuse of discretion in disqualifying Gonzales or whether he was denied procedural due process.

The respondents rely on the ruling that participation by a person in the reorganization meeting of the KBL and then subsequently filing a certificate of candidacy under the Nacionalista banner was an act of turncoatism which disqualified that person from running for the position of mayor (Evasco vs. Commission on Elections, G. R. No. 52401, January 28, 1980; Gabatan vs. Commission on Elections, G. R. No. 52381, January 26, 1980).

On the other hand, the petitioner contends that the basis for his disqualification is insubstantial. It consisted merely of his attendance at an organization meeting of the KBL. That was the only occasion when he attended a meeting of KBL adherents. He did not formally affiliate with the KBL. He did not participate as an officer in the campaign of the KBL in an election preceding the election of January 30, 1980, as contemplated in section 1 of Presidential Decree No. 1661.

The petitioner invokes the ruling in Reyes vs. Commission on Elections, G. R. No. 52699, May 15, 1980 that the respondent in a disqualification case is entitled to an adequate hearing. (See Pimentel vs. Comelec, G.R. No. 52428, February 21, 1980.)

We hold that the rudimentary requirements of fair play demand that Gonzales be afforded ample opportunity to prove that he never disaffiliated from the Bicol Saro Party and that he did not affiliate with the KBL.

A hearing means that a party should be given a chance to adduce his evidence to support his side of the case and that the evidence should be taken into account in the adjudication of the case (Edwards vs. McCoy, 22 Phil. 598, 600).

The Comelec disqualified Gonzales without hearing his evidence. It 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.

Moreover, 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 campaign would not be wasted.

WHEREFORE, the Comelec's resolutions of January 25 and February 22, 1980 in PDC Case No. 51 are reversed and set aside.

The Comelec is directed to hear anew the disqualification case by allowing Gonzales to present his evidence and respondent Imperial to present additional evidence. Respondent Sales, if he so desires, may intervene in the case. After hearing, the Comelec should render the appropriate decision as law and justice may require. No costs.

SO ORDERED.

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

Fernando, C.J., As the language of the second paragraph of Section 9 of the 1978 Election Code is broad enough to empower the Commission on Elections to pass on questions of ineligibility, I would qualify my concurrence to mean that the full-dress hearing required would likewise be decisive of such issue, thus avoiding the need for a separate quo warranto petition.

Teehankee, J., in separate concurrence, voted that the disqualification case be not remanded to Comelec, but subject to the filing of election protest or quo warranto by defeated opponent Sales in the proper CFI within the 10-day grace period.

SEPARATE OPINION

TEEHANKEE, J.:

I concur fully with the Court's decision penned by Mr. Justice Aquino setting aside the Comelec's questioned resolutions disqualifying petitioner Gonzales for alleged turncoatism on the eve of the elections and holding that "the rudimentary requirements of fair play demand that petitioner be afforded ample opportunity to adduce his evidence to prove and support his side of the case, particularly since the Comelec "did not bother to resolve the factual issues" and made "no finding as to when the KBL became a duly accredited political party."

In my separate concurring opinion in the cited case of Renato Reyes vs. Comelec, G.R. 52699, May 15, 1980, I had stressed the need for such a full-dress hearing in such disqualification cases for alleged turncoatism because of the seven vital factual and legal considerations therein set forth, such as the stark fact that the KBL became a duly accredited political party only in late December, 1979 after the sudden calling of the elections for January 30, 1980 and that before then, by this Court's own solemn pronouncements in the Peralta and Laban cases of 1978, the dominant KBL was not a political party but merely an umbrella organization of all pre-martial law political parties.

The Court's judgment at bar setting aside the Comelec resolutions which disqualified petitioner and wrongfully allowed his KBL opponent Ireneo T. Sales, Jr. to be proclaimed and to assume office as elected mayor of the Municipality of Polangui, Albay means of course that upon simple verification of the recount of votes made in the

lower court showing that petitioner Gonzales actually won by 253 votes over Sales (9,209 votes as against 8,956 votes for Sales, see page 6, decision), petitioner Gonzales must be duly proclaimed and assume office as the elected mayor of Polangui, Albay pending the further proceedings now ordered by the Court.

My only disagreement with the judgment at bar is in the second paragraph of the dispositive part thereof remanding the case to the Comelec for the reception of full evidence of the parties on the issue of alleged turncoatism and for appropriate decision, thus seemingly continuing the pre-proclamation proceedings even at this late stage 11 months after the elections. I submit that the Court's unanimous decision and judgment[*] in the case of *Arcenas vs. Comelec*, G.R. No. 54039, November 28, 1980 is controlling. Accordingly, in consonance with the ruling therein made through the Chief Justice, the pre-proclamation controversy must now be laid to rest and resort must now be made by the defeated candidate Sales to the remedy of an election protest or quo warranto in the proper court of first instance, the office involved being that of municipal mayor (as provided in Section 190 of the 1978 Election Code), which action must be filed within the usual ten-day grace period from notice of this decision, as granted by the Court in all other cases (See *Bacayo vs. Comelec*, G.R. 54399, Resolution of September 3, 1980). This is but to reiterate the thesis of my separate opinions in the cases of *Reyes and Arcenas*, supra, and *Singco vs. Comelec*, G.R. No. 52830, November 28, 1980 and *Nepomuceno vs. Comelec*, G.R. No. 54633, December 23, 1980.

My vote, therefore, is that the Court's judgment should be limited to the first paragraph of the dispositive portion thereof reversing and setting aside the questioned Comelec resolutions which disqualified petitioner Gonzales as a candidate on the eve of the election, without any remand to the Comelec but subject to the filing of an election protest or quo warranto by the defeated opponent Ireneo T. Sales, Jr. in the proper court of first instance within the 10-day grace period from notice hereof.

[*] Justice Ramon C. Aquino took no part, but all other nine Associate Justices concurred in the decision penned by the Chief Justice.

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