

FELIPE M. SEVILLEJA, PETITIONER, VS. COMMISSION ON ELECTION, MUNICIPAL BOARD OF CANVASSERS OF SAN MANUEL, PANGASINAN, AND LAUREANO PEREZ, RESPONDENTS.*G.R. No. 52793. August 31, 1981*

Ponente: MAKASIAR, J.

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Before Us are two petitions filed by Felipe M. Sevilleja, one docketed as G.R. No. 52793 and the other docketed as G.R. No. 53504.

G.R. No. 52793 is an amended petition for certiorari, mandamus and quo warranto seeking the annulment and cancellation of the proclamation of respondent Laureano Perez as mayor of San Manuel, Pangasinan by the respondent Municipal Board of Canvassers and praying that judgment be rendered ordering respondents Commission on Elections and Municipal Board of Canvassers to proclaim the herein petitioner as the duly elected mayor of said municipality.

G.R. No. 53504, on the other hand, is a petition to review on certiorari COMELEC Resolutions in PDC Case No. 117 dated January 28, 1980, cancelling petitioner's certificate of candidacy, and in PP Case No. 491 dated March 10, 1980, dismissing the petition for annulment of proclamation, mandamus, prohibition and injunction with writ of preliminary mandatory injunction or restraining order.

Petitioner was the certified Nacionalista Party (NP) candidate for mayor in the municipality of San Manuel, Pangasinan in the January 30, 1980 elections. Laureano Perez, private respondent in G.R. No. 52793, was the Kilusang Bagong Lipunan (KBL) candidate for the same position while Francisco Asuncion, Jr. and Alejandro Tuvera, private respondents in G.R. 53504, were independent candidates for mayor and vice-mayor, respectively.

On January 15, 1980, respondents Asuncion and Tuvera filed a petition with the Commission on Elections docketed as PDC Case No. 117 to disqualify herein petitioner on the ground of turncoatism alleging that the latter was a KBL member immediately previous to the filing of his candidacy under the NP ticket, thus, violating Article XII(C), Section 10 of the New Constitution, in relation to Section 4 of Batas Pambansa Blg. 52 and PD 1661, as amended. To said petition was attached an affidavit executed by one Juan Sicam, KBL Municipal Secretary of San Manuel, Pangasinan (Annexes "D" and "D-1", Vol. II, pp. 22-24, rec.).

On January 20, 1980, petitioner filed his verified answer thereto (Annex "E", Vol. II, pp. 25-29), denying any affiliation with the KBL and claiming that he was elected as NP Municipal Councilor in 1967 and served as such up to 1971; elected in 1972 as Barangay Captain of Barangay Sto. Domingo, San Manuel, Pangasinan as belonging to the Nacionalista Party; and elected in 1974 as President of the Association of Barangay Captains (ABC) and being the ABC President, he was made an automatic member of the Sangguniang Bayan of San Manuel, Pangasinan. Petitioner alleges that he has remained with the Nacionalista Party ever since and this can be proven by the fact that his candidacy, as well as his complete slate, was approved by Cipriano "Tito" Primicias, Jr., Provincial NP Chair-man for the Province of Pangasinan, making him the official NP candidate for mayor in

the municipality of San Manuel. This was later substantiated by an affidavit of Cipriano "Tito" Primicias, Jr., dated March 22, 1980, to that effect (Annex "E", Vol. I, p. 86, rec.).

In the morning of January 21, 1980, respondent Commission conducted a hearing on the petition for disqualification (PDC Case No. 117). The hearing officer received the evidence of both parties. Herein respondents Asuncion and Tuvera, petitioners therein, presented the following exhibits: Exhibits "A", "A-1", to "A-5", minutes of the meeting of the KBL Chapter Organization of San Manuel, Pangasinan held at the Municipal Building on January 24, 1979; Exhibit "B2, affidavit of Juan Sicam dated December 31, 1979; Exhibits "C", "C-1" and "C-2", KBL Organization of Barangay Sto. Domingo, San Manuel, Pangasinan; Exhibit "D", a telegram dated January 10, 1980 sent by NP Acting President Jose J. Roy to NP Provincial Chairman, Cipriano B. Primicias, Jr. of Pangasinan; and Exhibit "E", affidavit dated January 19, 1980 of Hermoso de Leon, KBL candidate for vice-mayor.

Herein petitioner, respondent therein, on the other hand, presented the following exhibits: Exhibit "1", Annex "1" of the answer, leaflet of the private respondents and their co-candidates; Exhibit "2", Annex "2" of the answer, list of NP candidates in San Manuel, Pangasinan, approved by Provincial NP Chairman, Cipriano B. Primicias, Jr.; Exhibit "3", Annex "3" of the answer, certificate of candidacy of the petitioner dated January 4, 1980; Exhibit "4", Annex "4" of the answer, receipt of the certificate of candidacy by the Election Registrar of San Manuel, Pangasinan; Exhibit "5", Rules of the KBL approved on October 25, 1979 by President Ferdinand E. Marcos; and Exhibits "6" and "6-A", verified answer of the petitioner dated January 20, 1980 (Petition, Vol. II, pp. 4-5, rec.).

On January 28, 1980, respondent Commission on Elections resolved to grant the petition for disqualification in PDC Case No. 117 (Item 8532, otherwise referred to as Resolution No. 8532), in effect cancelling herein petitioner's certificate of candidacy (Annex "G" Vol. II, p. 40, rec.).

Upon learning of the said resolution on January 29, 1980, petitioner immediately filed a motion for clarification and/or reconsideration and to suspend the implementation of resolution which was erroneously dated January 30, 1980 (Annex "H", Vol. II, pp. 41-46, rec.).

On January 30, 1980, at about 6:30 P.M., after voting hours, Atty. Francisco Sorvida, the election registrar of San Manuel, Pangasinan, received a telegram from the Commission on Elections stating that the certificate of candidacy of the petitioner was not given due course and that the latter was substituted by Francisco Asuncion, Jr. as NP official candidate for mayor. In view thereof, the said election registrar issued instructions to the different voting centers to proceed with the counting of votes but to separate the NP block votes which should neither be counted in favor of the petitioner nor Francisco Asuncion Jr. pending verification of the said telegram and pending resolution of the motion for reconsideration filed by petitioner in PDC Case No. 117.

The following day, February 1, 1980, the Municipal Board of Canvassers, composed of Atty. Francisco Sorvida, as chairman, with Lolita Pasalo, representing the office of the municipal treasurer of San Manuel, Pangasinan and Inencion Martirez, representing the Ministry of Education and Culture, as members, pro-claimed Laureano Perez, KBL bet, as the mayor-elect of San Manuel, Pangasinan (Annex "D", Vol. I, p. 85, rec.). However, it appears from the certifications issued by Attys. Francisco Sorvida and Rodolfo S. Itchon, provincial election officer of Pangasinan, dated February 4, 1980 and March 11, 1980, respectively, that petitioner obtained the highest number of votes, with Perez coming in second, and Asuncion coming in last (Annexes "B" and "C", Vol. I, pp. 82-84, rec.). [In his comment filed on June 18, 1980 and in a hearing conducted on October 9, 1980 before this Court, respondent Perez disputed the veracity of these certifications.]

February 5, 1980 was marred by the burning of the municipal building of San Manuel, Pangasinan together with

all the ballot boxes, ballots, minutes of voting and counting of votes, tally sheets, voting paraphernalia, election returns and other documents kept therein.

On February 11, 1980, herein petitioner filed an election protest with the Court of First Instance of Pangasinan, Branch V, Villasis, entitled "Felipe M. Sevilleja vs. Laureano Perez and Francisco Asuncion, Jr.," docketed as Civil Case No. U-3448. (A similar case was filed on February 5, 1980 by respondent Asuncion against respondent Perez with the same court, docketed as Civil Case No. U-3446).

On February 14, 1980, herein petitioner filed with the Commission on Elections supplemental arguments in support of the motion for reconsideration in PDC Case No. 117 (Annex "H-1", Vol. II, pp. 47-49, rec.) primarily, to include as evidence the certification of Atty. Francisco Sorvida dated February 4, 1980.

Subsequently, on February 22, 1980, the herein petitioner likewise filed with the Commission on Elections a petition against respondent Perez, docketed as PP Case No. 491, to annul the latter's proclamation as mayor of San Manuel, Pangasinan, to restrain him from assuming office scheduled on March 3, 1980, and to declare petitioner instead as the duly elected mayor of said municipality (Annex "D", Vol. I, pp. 20--31, rec.).

On February 29, 1980, Sevilleja filed with this Court a petition for certiorari, prohibition, injunction, mandamus, quo warranto, with writ of preliminary mandatory injunction or restraining order docketed as G.R. No. 52793, seeking to restrain and prohibit respondent Perez from assuming office as mayor of San Manuel, Pangasinan and to annul his proclamation made by respondent Municipal Board of Canvassers on February 1, 1980, raising as principal ground therein grave abuse of discretion in proclaiming respondent Perez as mayor-elect of San Manuel. Petitioner likewise prayed for judgment ordering respondent Commission on Elections and Municipal Board of Canvassers to proclaim him as the duly elected mayor of said municipality (Vol. I, pp. 3-16, rec.). [In view of subsequent developments, this petition was later amended on May 5, 1980 to limit the same to certiorari, mandamus, and quo warranto (Vol. I, pp. 66-80, rec.).]

On March 3, 1980, respondent Perez took his oath and assumed office as municipal mayor of San Manuel.

On March 10, 1980, petitioner filed a second supplemental arguments in support of the motion for reconsideration in PDC Case No. 117 to include the certification of Atty. Rodolfo S. Itchon as evidence (Annex "H-2", Vol. II, pp. 50-52, rec.).

On the same date respondent Commission on Elections resolved to dismiss the petition in PP Case No. 491 (Item 9532, otherwise referred to as Resolution No. 9532) on the ground that the Court of First Instance of Pangasinan has already acquired exclusive jurisdiction over the case considering that petition did not make any reservation to the effect that he is filing said election protest as a precautionary measure in case the petition which he will file in the Commission on Elections is denied (Vol. I, pp. 128-129, rec.). It likewise resolved to deny the motion for reconsideration in PDC Case No. 117 for lack of merit (Item 9542 or Resolution No. 9542) [Annex "K", Vol. II, p. 56, rec.].

Consequently, Sevilleja filed with this Court another petition on April 1, 1980, docketed as G.R. No. 53504, seeking to review on certiorari Comelec Resolution No. 8532 in PDC Case No. 117 dated January 28, 1980, on the ground that respondent Commission on Elections gravely abused its discretion in not giving due course to petitioner's certificate of candidacy. Petitioner assigns the following as errors:

- I. That respondent Commission on Elections erred and gravely abused its discretion in admitting and in not rejecting Exhibits A, A-1, to A-5, C-1, C-2 and D of the private respondents, despite vigorous objection and opposition of petitioner's counsel, on the ground that the said exhibits were not attached to the letter complaint of the private respondents as required by Resolution No. 1428 issued on January 7, 1980 by the respondent

Commission itself;

II. That assuming but without conceding that the said exhibits should be admitted, respondent Commission erred and gravely abused its discretion in finding that petitioner was a former KBL and was disqualified by Jose J. Roy, Acting NP President and substituted by respondent Asuncion, on the ground that said conclusion is based entirely upon speculation and is manifestly mistaken and the respondent Commission went beyond the issues of the case;

III. That respondent Commission erred and gravely abused its discretion in not finding that petitioner was a Nacionalista and still remains to be in the Nacionalista Party;

IV. That respondent Commission erred and gravely abused its discretion in not giving due course to the certificate of candidacy of the petitioner and in finding that he violated Section 10, Article XII, C, of the Philippine Constitution, in relation to Section 4, Batas Pambansa Blg. 52 and Presidential Decree No. 1661, as amended.

V. Finally, that respondent Commission erred and gravely abused its discretion in not setting aside its resolutions, one dated January 28, 1980 and the other dated March 10, 1980, not giving due course to the certificate of candidacy of the petitioner for the reason that the petitioner won the election. (Petition, Vol. II, p. 8, rec.).

On April 23, 1980, the Court of First Instance of Pangasinan, Branch V, Villasis, issued an order holding in abeyance Civil Case No. U-3448 until G.R. No. 53504 shall have been finally resolved by this Court (Annex "I", Vol. I, p. 90, rec.). [On the same day, the lower court issued an order to withdraw the election protest in Civil Case No. U-3446 upon motion of respondent Asuncion, protestant therein, "in view of the peculiar circumstances surrounding this case whereby the municipal building where the ballot boxes were kept and stored after the elections was totally burned, together with said ballot boxes, and for this reason, it would be impractical and impossible for the court to determine the ground for the protest such as the tampering of ballots; recounting of ballots intended for one party in favor of the other party; etc., and because there is a pending petition with the Commission on Elections in Manila for the holding of a special election in the municipality of San Manuel x x x" (Annex "H", Vol. I, p. 89, rec.). The said petition however for annulment of proclamation and holding of special elections filed by respondent Asuncion against respondent Perez was dismissed by the Commission on Elections in a resolution dated August 27, 1980, for lack of jurisdiction and lack of merit.]

The fundamental issue in this controversy is whether or not respondent Commission on Elections committed grave abuse of discretion in cancelling petitioner's certificate of candidacy. The ground relied upon by the respondent Commission is Article XII(C), Section 10 of the New Constitution which provides that "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 (6) months immediately preceding or following an election," in relation to Section 4 of Batas Pambansa Blg. 52 (An Act Governing the Election of Local Government Officials) which adopted the aforequoted constitutional provision as a special disqualification and Section I of P.D. 1661, as amended, which implemented the same.

OUR discussion will focus on the assignment of errors raised in G.R. No. 53504.

Petitioner assigns as first error respondent Commission's admission of the exhibits of respondents Asuncion and Tuvera despite petitioner's objection thereto on the ground that said exhibits were not attached to the letter/petition as required by Section 2 of Comelec Resolution No. 1428, issued on January 7, 1980 (re: guidelines on the filing to disqualify candidates in the January 30, 1980 elections), which requires that "a sworn petition seeking to disqualify any candidate in the January 30, 1980 elections shall be filed with the Commission on Elections in ten (10) legible copies, together with all the supporting documents or evidence if any." He contends

that since it is well settled that hearings before the respondent Commission are summary in nature and the usual method of presenting testimonial and documentary evidence before the ordinary courts of justice is not strictly followed, private respondents should have attached or annexed the said exhibits and other supporting documents or evidence in their letter/petition in order to prevent surprises and to enable petitioner to defend himself fully. For which reasons, according to petitioner, re-spondent Commission committed grave abuse of discretion in admitting private respondents' evidence.

This assignment of error raises no substantial argument. Comelec Resolution No. 1428 could not have been intended to deprive parties of their right to present evidence on account of failure to attach or annex exhibits in their petition for disqualification. Obviously, the said resolution is merely directory; for otherwise, it would be tantamount to denial of one of the cardinal requirements of procedural due process as laid down in the oft-cited case of *Ang Tibay vs. The Court of Industrial Relations and National Labor Union, Inc.* (69 Phil. 635), namely, the right to a hearing which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. The summary nature of a proceeding cannot be construed so as to defeat this fundamental right of an individual. Henceforth, there can be no grave abuse of discretion in the admission of private respondents' exhibits. Neither can petitioner claim that he was denied due process as a result thereof. Petitioner was given an opportunity to controvert the facts established by private respondents' evidence not only during the hearing but also in his motion for reconsideration. As a matter of fact, he submitted additional documentary evidence in support of the said motion but the same did not warrant the reversal of the challenged resolution.

The second, third and fourth errors assigned by petitioner essentially boil down to a single allegation: that respondent Commission on Elections committed grave abuse of discretion in resolving that petitioner was a turncoat. This, actually, is the most vital argument relied upon by petitioner. However, We find the same to be devoid of merit.

Records disclose that a Comelec hearing in PDC Case No. 117 was conducted in the morning of January 21, 1980. Respondents Asuncion and Tuvera, as petitioners therein, presented evidence in support of their letter/petition (the question of admissibility is now beyond dispute); while petitioner, respondent therein, presented evidence in support of his answer already filed with respondent Commission. On the basis of these proofs, respondent Commission issued Comelec Resolution No. 8532 dated January 28, 1980, cancelling petitioner's certificate of candidacy, the text of which reads as follows:

"The records of this case show that respondent was a former KBL member in his capacity as an ABC President in the Municipality of San Manuel, Pangasinan (Exhibits 'A', 'A-2'); that he was a Barangay Captain in the KBL Organization, Barangay Sto. Domingo, San Manuel, Pangasinan; and thereafter was acting as Chairman, KBL Organiza-tion Barangay Sto. Domingo, San Manuel, Pangasinan (Exhibits 'C-1' and 'C-2'); and that previously respondent filed his Certificate of Candidacy as Nacionalista Party Candidate for Mayor in the Municipality of San Manuel, Pangasinan, however, on January 10, 1980, the Nacionalista Party, acting thru Jose J. Roy, Acting NP President, disqualified and replaced him by Dr. Asuncion in view of his '(respondent)' reported campaign for KBL Candidates '(Exhibits 3 and B).' By way of answer, respondent admitted that he was an Adhoc Chairman, Nacio-nalista Party, San Manuel, Pangasinan, who asked the Provincial NP Chairman of the province of Pangasinan for approval of his list of official Nacionalista Party (NP) Candidates in the Municipality of San Manuel, Pangasinan (Exhibits '2' and '2-B'); that the Comelec Registrar of San Manuel, Pangasinan certified that respondent was the NP official can-didate for Mayor in the Municipality of San Manuel, Pangasinan (Exhibits '4' and '4-A2').

"PREMISES CONSIDERED, the Commission, RESOLVED to grant the petition, and pursuant to Section 10, Article XII, C, Constitution of the Philippines, in rela-tion to Section 4, Pambansa Blg. 52 and Presidential

Decree No. 1661, as amended, the certificate of candidacy filed by re-spondent FELIPE M. SEVILLEJA for Mayor in the Municipality of San Manuel, Panga-sinan shall not be given due course for having changed his party affiliation within six months before the election." (Vol. II, p. 40, rec.).

Evidently, respondent Commission resolved to disqualify petitioner on the basis of the evidence or documents presented by private respondents vis-a-vis those submitted by petitioner. It must be pointed out that although petitioner denies member-ship with the KBL and alleges continuous affiliation with the NP, he was not able to present any substantial evidence to prove his contention. Moreover, his acti-vities belie the same. As the evidence reveals, peti-tioner attended the organizational meeting of the KBL Chapter of San Manuel, Pangasinan on January 24, 1979 and in that said meeting, he willingly accepted mem-bership in the Board of Directors of the KBL. He was in fact one of those who signed the minutes of the said meeting. It was likewise established that petitioner was the chairman of the KBL Chapter in Barangay Sto. Domingo of the same municipality. Then, there was the telegram of Senator Jose J. Roy, National NP Chairman to Cipriano "Tito" Primicias Jr., the tenor of which is clearly unfavorable to peti-tioner as it seeks his replacement by respondent Asuncion in view of his reported campaign for KBL candidates in the provincial level. It is worth noting that the authenticity of these documents was never raised in issue.

All these relevant evidence weighed heavily against petitioner, setting clear that one's poli-tical affiliation is primarily determined by his active participation in the party's political activities. Respondent Commission, on the basis of the foregoing, concluded that he was a KBL. His subsequent affiliation, therefore, with the Nacionalista Party, as evidenced by his certificate of candidacy, and by his own admission violated Article XII(C), Section 10 of the New Constitution. This being the case, respondent Commission could not have gravely abused its discretion in cancelling petitioner's candidacy.

The above conclusion is in accord with this Court's ruling in the cases of Evasco vs. Obico and Commission on Elections (No. 52401, promulgated on January 28, 1980), Gabatan vs. Commission on Elections (No. L-32381, promulgated on January 26, 1980) and Santos vs. Commission on Elections, et al. (No. 52390, promulgated on March 31, 1981) where it was unequiv-ocably stated that "active involvement in KBL political affairs as a party, such as being a member of the Muni-cipal Committee thereof was the primary and decisive consideration upon which 'turncoatism' was found to have been committed in the aforesaid cases."

Petitioner's argument that his membership with the KBL was automatic because he was made member of the Sangguniang Bayan by virtue of his being the president of the Association of Barangay Captains, is untenable. The fact that he remained a member thereof indicates a willingness to be so bound. As an additional argument, petitioner cited the case of Lakas ng Bayan vs. Commission on Elections (82 SCRA 196 [1978]) wherein this Court advanced the view that the KBL is not a political party but an umbrella organization. Petitioner seems to have overlooked the fact that despite such pronouncement, the Nacionalista Party has never ceased to be an independent political party, with all the rights and privileges appertaining thereto. By his actuations, it is unmistakable that petitioner had chosen to identify himself with the KBL as a distinct political entity; otherwise he would have made reservation that he is keeping his affiliation with the NP or retaining his status as member therein. Moreover, the question of whether or not the KBL is a political party has been fore-closed by subsequent political developments. As significantly observed by this Court in Santos vs. Commission on Elections, et al., *supra* -?

"Under its Resolution No. 1406, promulgated December 22, 1979 laying down rules on the accreditation of political parties, Section 1 thereof provides that any duly registered political party in the April 7, 1978 election shall be entitled to accre-ditation. Pursuant to this Resolu-tion, KBL was duly accredited sepa-rately from the NP. That KBL had always been a political party or aggrupation can, therefore, no longer be open to question. Were KBL not such a political party, block voting as was declared valid in the case of Peralta vs. COMELEC,

82 SCRA 30, G.R. No. L-47771, March 11, 1978, could not have been availed of, by it, as it unquestionably did, in the 1978 elections. For block voting is voting for a political party."

Moreover, after the decision in the case of *LABAN vs. COMELEC* (82 SCRA 196 [1978]), the KBL was transformed into a distinct political party and ceased as a mere umbrella organization, as shown by subsequent political developments. It is significant to note that, after the April, 1978 election, in the Interim Batasang Pambansa, majority of the assemblymen are identified and identify themselves with pride as KBL members sporting t-shirts, hats and pins labelled KBL; while the handful of opposition die-hards identify themselves as members of the Nacionalista Party or PUSYON BISAYA or Mindanao Alliance. Much later, until December, 1979, the majority members of the IBP kept referring to themselves as KBL members and held caucuses or meetings to discuss vital issues and proposed legislations as such KBL members. On the floor of the IBP, the members of the KBL identify themselves as such and the KBL has been referred to as the party of the administration. The actions of the organizers, leaders and members of the KBL established the said party as a de facto political party since April, 1978. The acts performed by the KBL leaders and their members, not the formality of its registration as a party, should determine the commencement of its existence as such political party. It has been held with reference to illegal associations that the nature and true character of an organization are oftentimes determined by the speeches and activities of its leaders and members rather than by its constitution and by-laws (*Mr. Justice Mariano Albert in People vs. Ramos*, CA-G.R. No. 5318, Dec. 28, 1940, 40 O.G. 2305, Sept. 30, 1941).

Petitioner likewise assails the constitutionality of P.D. No. 1661 on the ground that it violates the prohibition against ex post facto law. As amended, Section 1 thereof provides that "it shall be unlawful for any registered or accredited political party to nominate and/or support as its official candidate any person belonging to another accredited or registered party unless he has affiliated with the nominating party at least six months before the election." In the *Santos* case above-cited, We held that:

"The decree could by no stretch of the clear scope of the novel constitutional concept, be banned under the ex post facto law clause of the Constitution, for it merely provides for a certain disqualification of a candidate aspiring to be chosen to an elective office which, being a mere privilege, is a fit subject for reasonable statutory regulation, clearly not penal in character. As defined, ex post facto law is limited in its scope only to matters criminal in nature" (citing several cases).

Verily, there is factual as well as legal basis in respondent Commission's conclusion that petitioner was a turncoat.

The futility of the last assignment of error is readily apparent. Petitioner alleges that respondent Commission on Elections gravely abused its discretion in not setting aside its Resolutions in PDC Case No. 117, one dated January 28, 1980 and the other dated March 10, 1980, not giving due course to petitioner's certificate of candidacy, for the reason that the petitioner won the election. Petitioner contends that since he had already won the mayoralty race in San Manuel, Pangasinan, the disqualification case against him has become moot and academic. His assumption of victory finds support in the certifications issued by Atty. Sorvida and Atty. Itchon, local and provincial election registrars therein, respectively, which provide the following data:

(Annex "B" of the Amended Petition - Certification of Atty. Sorvida dated February 4, 1980)

1. Felipe Sevilleja ----- 4,832 votes
2. Laureano Perez ----- 4,755 votes
3. Francisco Asuncion Jr. ----- 3,996 votes

(Annex "C" of the Amended Petition - Certification of Atty. Itchon dated March 11, 1980)

1. Felipe Sevilleja ----- 4,823 votes
2. Laureano Perez ----- 4,755 votes
3. Francisco Asuncion Jr. ----- 3,633 votes

The discrepancy between the two certifications as to the number of votes received by candidate Sevilleja was explained by petitioner himself as being purely a clerical error while that respecting the votes of respondent Asuncion was attributed to the NP block votes which were first segregated from the rest of the ballots as per instruction of Atty. Sorvida. This Court is not convinced. In certifications of this character, figures are of primary importance. It is rather surprising that a typographical error should exist without any further explanation from the person certifying it. Neither could the inclusion or exclusion of the 111 NP block votes sufficiently explain the discrepancy in the second instance, as, obviously, the application of simple mathematical computations would yield results different from those furnished by either certifications. Indeed, there is every reason to doubt the veracity of these figures. In the hearing before this Court held on October 9, 1980, it turned out that when Atty. Sorvida signed the certification, the space provided for the number of votes for Sevilleja was left blank, giving the impression that it was filled in only after he had certified it. On the other hand, the certification of Atty. Itchon was prepared and executed in the absence of other parties. Counsel for respondent Perez pointed out that the total number of votes appearing in the said certifications exceeded the total number of voters who actually cast their ballots in San Manuel. In any case, the figures appearing therein do not tally with those contained in the copies of the election returns transmitted to the respondent Commission. It must be noted that although the ballots and other documents were burned together with the municipal building, respondent Commission was already in possession of copies of the election returns from San Manuel from which one can safely base the results of the elections held therein, absent any fraud, terrorism or other election irregularities. The records do not contain any concrete evidence to prove the commission of election irregularities during the elections in said municipality. These circumstances are significant if only to show the unreliability of the certifications from which the herein petitioner based his alleged fact of winning. The more important consideration would be the resolution of January 28, 1980. It is beyond dispute that the disqualification of petitioner came two days before the January 30, 1980 elections. The said resolution was final and executory in nature following the provision of the 1978 Election Code (P.D. No. 1296), Section 175 specifically, which states that "the Commission shall be the sole judge of all pre-proclamation controversies and any of its decisions, orders or rulings shall be final and executory. x x" Strictly, therefore, the local election registrar, upon receipt and verification of communications from the respondent Commission informing him of its resolution cancelling petitioner's certificate of candidacy, should not have counted the votes for Sevilleja nor should have issued instructions contrary to the Comelec order. His acts were clearly in disregard of the aforequoted electoral provision. Petitioner, on the other hand, cannot claim lack of notice of said resolution. Although the official copy of said resolution was allegedly received only on February 25, 1980, petitioner was sufficiently informed thereof prior to the elections. In his affidavit dated March 31, 1980 (Annex "M", Vol. II, p. 58, rec.), he stated that he learned of the said resolution on January 29, 1980 and filed on the same date a motion for clarification and/or reconsideration which was erroneously dated January 30, 1980. This motion for reconsideration was denied by the March 10, 1980 resolution of the Comelec, thereby affirming the January 28, 1980 resolution. Furthermore, We have established that the disqualification was warranted by the facts and the law and that, therefore, no grave abuse of discretion could have been committed by respondent Commission in rendering the challenged resolution. Consequently, respondent Municipal Board of Canvassers could not have acted with grave abuse of discretion in proclaiming respondent Perez as mayor-elect of San Manuel. This, in effect, settles the issue in G.R. No. 52793.

The question of jurisdiction is brought in issue as a result of the dismissal of Sevilleja's petition in PP Case No.

491 which is for annulment of respondent Perez' proclamation as mayor of San Manuel, Pangasinan, etc., on the ground that the Court of First Instance of Pangasinan, Branch V, Villasis has already acquired jurisdiction over the case and no reservation was made to the effect that the election protest in the lower court was filed *ex abundanti cautela*. This refers to Comelec Resolution No. 9532 dated March 10, 1980. As borne out by the records, the election protest in the lower court was filed on February 11, 1980 (Civil Case No. U-3448) without reservation while the petition in PP Case No. 491 was filed on February 22, 1980. There is no question that both actions are related, raising substantially the same issues and basically praying for the annulment of the proclamation of respondent Perez. Obviously, the Court of First Instance already acquired exclusive authority to inquire into and pass upon the title of respondent Perez and the validity of his (Perez') proclamation by respondent Municipal Board of Canvassers on February 1, 1980. As a matter of fact, the said court acquired jurisdiction over the case as early as February 5, 1980 when respondent Asuncion filed therein an election protest against respondent Perez (Civil Case No. U-3446) without reservation. This being the case, there is no reason to depart from the well-settled rule that "once a court of first instance has acquired jurisdiction by virtue of the filing of an election protest, all questions relative thereto will be decided in the case itself and not in another proceeding before a different forum." This is in consonance with the ruling in the cases of *Acaín and Malimit vs. Board of Canvassers, Agusan, et al.* (108 Phil. 165; *Reyes vs. Reyes & Commission on Elections*, 22 SCRA 485 [1968]; and *Filart vs. Commission on Elections*, 53 SCRA 457 [1973]). Respondent Commission, in recognition of the lower court's prior jurisdiction, correctly dismissed the petition.

WHEREFORE, THE PETITIONS ARE HEREBY DISMISSED AND COMELEC RESOLUTIONS NOS. 8532 AND 9542 IN PDC CASE NO. 117, DATED JANUARY 28, 1980 AND MARCH 10, 1980, RESPECTIVELY, AND COMELEC RESOLUTION NO. 9532, ALSO DATED MARCH 10, 1980, ARE HEREBY AFFIRMED. NO COSTS.

SO ORDERED.

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

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

Teehankee, J., dissents in a separate opinion.

Aquino, J., see attached concurrence.

Abad Santos, J., on leave.

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CONCURRING OPINION

AQUINO, J.:

I concur in the result. The candidates for mayor of San Manuel, Pangasinan in the elections held on January 30, 1980 were Felipe M. Sevilleja of the Nacionalista Party; Laureano Perez of the Kilusang Bagong Lipunan Party and Doctor Francisco Asuncion, Jr., an independent candidate.

On January 15, 1980, Doctor Asuncion and Alejandro Tuvera (an independent candidate for vice-mayor) filed with the Commission on Elections a petition to disqualify Sevilleja on the ground that, being formerly a member

of the KBL, he became a Nacionalista.

After hearing, the Comelec in its Resolution No. 8532 dated January 28, 1980 cancelled Sevilleja's certificate of candidacy on the ground of turncoatism.

In spite of that disqualification, Sevilleja obtained the highest number of votes. But because he was disqualified, Perez, who obtained the second highest number of votes, was proclaimed as mayor on February 1, 1980 by the municipal board of canvassers.

Four days later, or on February 5, all the ballot boxes, and the contents thereof were destroyed when the municipal building of San Manuel was burned. That holocaust made a mockery of the mayoralty election. It precluded the filing of any electoral protest.

Notwithstanding the futility of any election protest due to the destruction of the ballots, Sevilleja on February 11 filed with the Court of First Instance of Pangasinan, Villasis Branch V, an election protest against Perez and Asuncion (Civil Case No. U-3448).

However, after presumably realizing the futility of his election protest, Sevilleja filed on February 22 with the Comelec a petition wherein he prayed that the proclamation of Perez be annulled, that he be restrained from assuming office and that he (Sevilleja) be proclaimed as mayor.

Then, without awaiting the outcome of that petition in the Comelec, Sevilleja filed with this Court on February 29 a petition for certiorari, prohibition, injunction, mandamus and quo warranto against Perez, the Comelec and the municipal board of canvassers. Sevilleja asked for the same reliefs which he had sought in his petition in the Comelec. He alleged that the municipal board of canvassers committed a grave abuse of discretion in proclaiming Perez (G.R. No. 52793).

Perez took his oath on March 3 and assumed the position of mayor.

On March 10, the Comelec dismissed Sevilleja's petition to annul the proclamation of Perez. The Comelec reasoned out that Sevilleja's remedy was in the election protest which he had filed without indicating that he did so *ad cautelam ex superabundanti*.

With respect to the disqualification case, the Comelec in its Resolution No. 9542 denied Sevilleja's motion for the reconsideration of its Resolution No. 8532 cancelling Sevilleja's certificate of candidacy on the ground of turncoatism.

That denial prompted Sevilleja to file with this Court on April 1, 1980 another petition for the review of the Comelec's disqualification resolution (G.R. No. 53504.)

I agree that the second petition is devoid of merit. The Comelec's finding that Sevilleja changed his party affiliation within six months preceding the election is conclusive on this Court.

As to the first petition, G.R. No. 52793, I am of the opinion that it should be dismissed because (1) as to its certiorari aspect, it was prematurely filed since there was no resolution of the Comelec being assailed in that petition and (2) this Court has no jurisdiction to issue the writs of prohibition, quo warranto and mandamus in connection with proclamation controversies that have not yet been decided by the Comelec.

I also entertain the view in this case that the Comelec should order the holding of a special election in view of the loss of the ballots and other electoral records. The voters of San Manuel should be given another chance to elect their mayor. Sevilleja would be qualified to run in that special election.

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DISSENTING OPINION

TEEHANKEE, J.:

I dissent from the majority's dismissal of the petitions and affirmance of the Comelec resolution disqualifying petitioner Sevil-leja as a turncoat for having returned to and ran in the January 30, 1980 local elections as a candidate of the Nacionalista Party to which he had always belonged.

The grounds of my dissent are set forth in my extensive dis-sent in the Ticzon disqualification cases of San Pablo City[1] and in Santos vs. Comelec[2] which I hereby reproduce by reference. Suffice it to stress that by this Court's own solemn pronouncement in Laban vs. Comelec[3], the KBL was but an umbrella organization in the 1978 Interim Batasang Pambansa elections, leaving the Nacionalistas as well as others belonging to other parties free in the future "to join the party of their choice assuming that the KBL will eventually evolve into a new political party." The KBL did convert itself into a political party late in December 1979 for the local elections which were suddenly called for January 30, 1980 instead of for December 1980 or early 1981 as originally reported and announced in November 1979.[4] This all goes to show that the turncoatism prohibition (which envisages at least more than six months notice of the election, as it allows a change of party affiliation more than six months before or after the election) could not be invoked in the January 30, 1980 elections, for then all the Nacionalistas and Liberals who had turned KBL should have been disqualified as turncoats.

A candidate who after an interregnum of no contested elections under martial law runs as an oppositionist against the overwhelming power and resources of the dominant KBL can hardly be denounced as violating the turncoat provision following the spirit and not the mere letter of the Constitution and of the law. The President himself, on January 4, 1980, the deadline for filing of certificates of candidacy, "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 aspirants 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 continued." [5]

As the record shows, petitioner Sevilleja obtained the highest number of votes for the mayoralty of San Manuel, Pangasinan besting respondent incumbent mayor Laureano Perez who ran under the KBL. But since Sevilleja was disqualified by the Comelec, the loser Perez was instead proclaimed as mayor by the canvassing board on February 1, 1980, contrary to the prevailing doctrine since Topacio vs. Paredes.[6]

As is aptly stated in the separate opinion of Mr. Justice Aquino, "(F)our days later, on or about February 5, all the ballot boxes, and the contents thereof, were destroyed when the municipal building of San Manuel was burned. That holocaust made a mockery of the mayoralty election. It precluded the filing of any electoral protest." Respondent mayor and some companions had been charged by the military/police authorities for the burning down of the building.

I concur, therefore, with Justice Aquino's vote - which is the least that can be done in fairness and justice to the electorate of San Manuel, Pangasinan - "that the Comelec should order the holding of a special election in view of the loss of the ballots and other electoral records. The voters of San Manuel should be given another chance to

elect their mayor. Sevilleja would be qualified to run in that special election."

[1] G.R. Nos. 52451, 52678 and 53393 (Ticzon vs. Comelec), March 31, 1981.

[2] G.R. No. 52390, March 31, 1981.

[3] 82 SCRA 196 (March 25, 1978).

[4] Times-Journal issue of Nov. 16, 1979 and Bulletin Today issues of Nov. 21 and Nov. 22, 1979.

[5] Daily Express issue of January 4, 1980.

[6] 23 Phil. 238 (1912).

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