

THE PROVINCIAL CHAPTER OF LAGUNA, NACIONALISTA PARTY (NP), PETITIONER, VS. COMMISSION ON ELECTIONS AND FELICISIMO T. SAN LUIS, RESPONDENTS.

G.R. No. 53460, May 27, 1983

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is a petition for certiorari filed by the petitioner against respondents which seeks to impugn the validity of the proceedings held before the respondent Commission on Elections (COMELEC) in PDC No. 165, wherein the disqualification of herein private respondent Felicisimo T. San Luis was sought, the same being allegedly violative of the due process clause of the Constitution; and to reverse the dismissal resolution issued by respondent COMELEC in said PDC No. 165, as being allegedly in contravention of the Constitution (Article XII-C, Section 10) and of Section 4, Batas Pambansa Blg. 52.

In the elections of November 8, 1971, private respondent Felicisimo T. San Luis was the official candidate of the Liberal Party (LP) for Governor of Laguna. Private respondent won and accordingly assumed said position, the term of which would have ordinarily expired on December 31, 1975.

On January 18, 1980, petitioner filed with the COMELEC a petition (docketed as PDC No. 165) to disqualify the private respondent from running as official candidate of the Kilusang Bagong Lipunan (KBL) for the office of Governor in the province of Laguna based on "turncoatism" as provided for under Section 10, Article XII-C of the 1973 Constitution in relation to Section 4 of Batas Pambansa Blg. 52 [pp. 22-24, rec.].

Section 10, Article XII-C of the 1973 Constitution reads:

"Sec. 10.— 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 months immediately preceding or following an election."

The pertinent portion of Section 4, Batas Pambansa Blg. 52 reads:

"Sec. 4. Special Disqualification. — In addition to violation of Section 10 of Article XII-C of the Constitution and disqualifications mentioned in existing laws, which are hereby declared as disqualifications for any of the elective officials enumerated in Section 1 hereof, any retired elective provincial, city or municipal official, who has received payment of the retirement benefits to which he is entitled under the law and who shall have been 65 years of age at the commencement of the term of office to which he seeks to be elected, shall not be qualified to run for the same elective local office from which he has retired" (*italics supplied*).

The records likewise reveal that prior to January 23, 1980, a similar petition to disqualify on the ground of turncoatism (docketed as PDC No. 172) was filed by the Provincial Chapter of Laguna, Kilusang Bagong Lipunan (KBL) against Wenceslao R. Lagumbay, the Nacionalista Party (NP) official candidate for Governor of Laguna, in the January 30, 1980 elections [pp. 79-80, rec.].

On January 21, 1980, private respondent Felicisimo T. San Luis filed with the Commission on Elections (COMELEC) his answer in PDC No. 165 [pp. 25-28, rec.]. On the same date, the Commission on Elections (COMELEC) set for joint hearing PDC No. 165 and PDC No. 172 on January 24, 1980 at 10:00 A.M. [pp. 75-76, rec.].

On January 23, 1980, the private respondent filed with the public respondent COMELEC his "Formal Submission of Annexes" [pp. 31-32, rec.].

On January 24, 1980, private respondent Felicisimo T. San Luis (respondent in PDC No. 165) filed with the Commission on Elections (COMELEC) a memorandum [pp. 77-78, rec.]. Likewise, on the same date, Wenceslao R. Lagumbay, respondent in PDC No. 172, filed with the COMELEC a "Formal Offer of Documentary Evidences with Comments on Petitioner's Own Evidences" [pp. 85-A to 87, rec.].

On January 25, 1980, herein petitioner filed with the Commission on Elections a memorandum [p. 2, COMELEC's Comment; p. 95, rec.].

On February 4, 1980, the private respondent filed with the COMELEC a motion for an early favorable resolution of the case, it allegedly appearing that he had won over Wenceslao R. Lagumbay, the Nacionalista Party (NP) official candidate, by a majority of around 55,000 votes [p. 2, COMELEC's Comment; p. 95, rec.].

On February 6, 1980, the petitioner filed with the COMELEC its reiteration to disqualify private respondent Felicisimo T. San Luis [p. 2, COMELEC's Comment; p. 95, rec.].

On February 21, 1980, the COMELEC, in a resolution, denied the petition to disqualify private respondent Felicisimo T. San Luis as "the petitioner failed to present sufficient evidence against herein respondent." Thus, Resolution No. 9188 reads:

"9188. (PDC No. 165). In the matter of the petition for disqualification, dated January 18, 1980, filed by the Provincial Chapter of Laguna, Nacionalista Party (NP), represented by Wenceslao R. Lagumbay, Acting Chairman, against Felicisimo T. San Luis, respondent, on the ground that said respondent allegedly violated the provision of Section 10, Article XII-C, Constitution in relation to Batas Pambansa Blg. 52.

"A review of the said petition shows that the petitioner failed to present sufficient evidence against herein respondent.

"Premises considered, the Commission RESOLVED to deny the petition of the Provincial Chapter of Laguna, Nacionalista Party (NP).

"SO ORDERED" [p. 33, rec.; italics supplied].

Hence, the instant petition.

I

It is initially contended by the petitioner that public respondent Commission on Elections issued the questioned resolution (No. 9188) dismissing the petition in PDC No. 165, without observance of the cardinal precepts of due process.

While petitioner admitted that the disqualification case was set for hearing on January 24, 1980 at 10:00 A.M., nevertheless, it vehemently argued that the mere setting alone of such hearing cannot be taken as satisfying the requirements of due process.

Thus, petitioner insisted "that at COMELEC no formal hearing was conducted wherein the parties could have

confronted witnesses against each other. "NOT A SINGLE COMMISSIONER WAS IN ATTENDANCE. Only a staff member of its Legal Department was present when the case was called for hearing, and he directed the parties to submit their respective 'Annexes' (exhibits) after which, their memoranda" [p. 1, Petitioner's Reply; p. 118, rec.].

The aforesaid allegations of the petitioner have no foundation. It is to be noted that private respondent in its comment filed before this Court alleged the following:

"Private respondent thru counsel manifested that he was formally resting his case on the basis of the exhibits/documentary evidence which he had formally offered in writing, and a copy of which was furnished Atty. Marciano Brion Jr., counsel for the petitioner. Atty. Brion reserved his right to register his objections to the exhibits in writing, and manifested that he was not presenting any more evidence, in view of the admission of private respondent that he was elected Governor of Laguna on November 8, 1971 as official candidate of the Liberal Party and then ran for the same position as the standard bearer of the KBL Party during the January 30, 1980 elections. In fact, this was the same trend of argument adopted by petitioner when it argued as follows:

"If private respondent is bound, as all parties who filed pleadings in Court should be bound, by his affirmative allegations and admission in his pleadings signed by him under oath, then the case should end here with his disqualification and without any need for any further discussion.'

"Not that private respondent agrees with the foregoing Argument of Petitioner. The same was merely cited to show that in the proceedings before respondent COMELEC, petitioner really preferred not to present evidence, contrary to its claim now, that it was denied procedural due process, in that its counsel was not able to present evidence, confront witnesses or object to exhibits. Parties were even required to submit their respective memoranda. Private respondent submitted his memoranda in both cases, PDC No. 165 and 172, xerox copies of which are hereto attached as Annexes 3 and 4 of this comment.

"If Petitioner did not submit its memoranda, that is its fault, but certainly, it cannot shift the blame on the respondent COMELEC or to private respondent for not doing what it should have done.

"Attached to this Comment as Annex 5 is the xerox copy of the Formal Submission of Annexes of Respondent in PDC No. 165 showing on the bottom of page 2 thereof, that petitioner thru counsel was duly furnished a copy thereof. The fact of the matter is that counsel for petitioner concentrated his efforts more on PDC No. 172 entitled the Provincial Chapter of Laguna (KBL) vs. Wenceslao R. Lagumbay, as shown by the fact that on the date of the hearing on January 24, 1980, he submitted therein his own 'Formal Offer of Documentary Evidence with Comments on Petitioner's Own Evidences' a xerox copy of which is hereto attached as Annex 6 of this Comment" [pp. 4-6, Comment of Private Respondent Felicisimo T. San Luis; pp. 48-50, rec.; italics supplied].

In its reply, petitioner miserably failed to deny the said allegations of the private respondent. This is fatal to the cause of the petitioner. WE are constrained to sustain the stand of private respondent; for, apart from the presumption of regularity accorded to respondent Commission in the performance of its duties, petitioner failed to timely assert his right prior to the issuance of the above-questioned resolution. From January 24, 1980 up to February 21, 1980, when respondent COMELEC issued the aforementioned resolution, petitioner failed to press before respondent COMELEC its bid for an opportunity to be heard and belatedly cry for an alleged denial of due process only after receipt of an adverse resolution.

As correctly pointed out by the private respondent, "(I)ndeed, if petitioner had evidence to present or wanted to confront witnesses or object to evidence in open session (instead of submitting a written objection as he manifested before respondent COMELEC) why did it not file a motion to set the case again for hearing, knowing that elections were over and either its candidate or the private respondent would be proclaimed sooner or later.

Surely, if petitioner sincerely believed that it has not presented evidence, it should have acted immediately by asking the COMELEC to set the case for hearing for reception of its evidence, unless of course, petitioner thought that its candidate would win the elections, which was, of course, presumptuous on its part" [pp. 8-9, Comment of Private Respondent Felicisimo T. San Luis, pp. 52-53, rec.; italics supplied].

The requirements of due process are obeyed as long as the parties are given the opportunity to be heard. In the case at bar, petitioner was afforded all the chances to be heard until it submitted the case for resolution by his manifestation that, because of the admission of private respondent that he ran as Liberal Party candidate in the 1971 elections, he was not presenting any more evidence, only reserving his right to object to respondent's evidence.

In the case of *Maglasang vs. Ople* (L-38813, 63 SCRA 508 [1975]), then Associate Justice, now Chief Justice Enrique M. Fernando, ruled that the right to due process is not denied where the aggrieved party was given the opportunity to be heard.

The essence of due process is the requirement of notice and hearing, the presence of a party at a trial is not always of the essence of due process, and all that due process requires is an opportunity to be heard (*Auyong Hian vs. Court of Tax Appeals, et al.*, L-28782, Sept. 12, 1974, 59 SCRA 110; *Asprec vs. Itchon*, L-21685, April 30, 1966, 16 SCRA 921; *Cornejo vs. Secretary of Justice, et al.*, L-32818, June 28, 1974, 57 SCRA 663).

It is significant to note that respondent COMELEC's resolution was issued after private respondent submitted his "Formal Submission of Annexes" and after both parties submitted their respective memoranda. Thus, respondent COMELEC stated that it "decided PDC No. 165 based on the petition and memorandum of the petitioner and the answer, memorandum and the motion for the early favorable resolution of the case of the private respondent. To say, at this late hour, that the petitioner was denied the process in the COMELEC is unwarranted, . . . The petitioner had been allowed ample opportunity to ventilate its charge before the respondent COMELEC, as seen above, and failed in its attempt to support the same with proof" (p. 4, COMELEC's Comment; p. 97, rec.).

In other words, the petition filed against private respondent in PDC No. 165 was deemed submitted for decision on the basis of the pleadings, annexes and memoranda of the parties. And there is no denial of due process if the decision was "rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected" (*Interstate Commerce Commission vs. L. & N.R. Co.*, 227 U.S. 88, 33 S. Ct. 185, 57 Law. ed. 431; cited in *Ang Tibay, et al. vs. The Court of Industrial Relations, et al.*, 69 Phil. 635, 643; italics supplied).

A case in point is the case of *Armedilla vs. COMELEC, et al.* (No. 53393, recently decided by this Court on March 31, 1981). In said case, the COMELEC dismissed Armedilla's petition to disqualify private respondent Dizon. The dismissal was anchored on the ground of insufficiency of evidence. Thus:

"30. With respect to the disqualification case against Dizon, Armedilla interposed in this Court on March 18, 1980 an 'appeal by certiorari' wherein he contended that the Comelec did not observe due process in dismissing the case (G.R. No. 53393).

"31. Dizon in his comment on that appeal traversed the allegation as to nonobservance of due process. He said that at the hearing of the petition for disqualification on January 26, 1980 in the Comelec the case was submitted on the basis of the pleadings (p. 30, rollo of G.R. No. 53393)" [italics supplied].

In ruling to the effect that the COMELEC complied with the basic requirements of procedural due process in deciding the case on the basis of the pleadings submitted by the parties, this Court declared:

"With respect to the disqualification case against Mayor Dizon (G.R. No. 53393), the contention that due process was not observed in dismissing that case is not well-taken because petitioner Armedilla was given a

chance to controvert Dizon's defense that he was already a KBL partisan in April, 1978, or more than six months prior to January 30, 1980 but Armedilla was not able to overthrow that defense. He submitted the case for decision by the Comelec on the pleadings" (italics supplied).

Similarly, in the more recent case of *Garcia vs. COMELEC, et al.* (No. 53793, June 29, 1981), this Court ruled:

"Likewise, We are not in accord with the argument of the petitioner that she was denied due process because she was not afforded the opportunity 'to refute the alleged findings of the handwriting experts of the Comelec.' Such contention is without merit. At the outset, it should be recalled that at the hearing on March 11, 1980 before the COMELEC, the parties dispensed with the presentation of testimonial evidence, and merely prepared oral arguments and submitted the case for decision after filing their respective memoranda. Petitioner therefore waived further presentation of evidence" (italics supplied).

Aside from the fact that petitioner expressly waived its right to present further evidence, the mere act of petitioner's counsel in merely filing a memorandum after being satisfied with the alleged admission of private respondent until the issuance of the aforementioned adverse resolution, is already an implied manifestation that he was waiving his right to the other elements of a judicial hearing, like the presentation of additional evidence or the cross-examination of witnesses.

And petitioner's right to a hearing embracing particular elements, appropriate to judicial proceedings may be waived by taking part in informal proceedings without objection (*Martin vs. Wolfson*, 218 Minn. 557, 16 NW 2d 884; cited in 2 Am. Jur. 2d 114).

Thus:

". . . The right to present evidence, to have witnesses sworn, and to have them subjected to direct and cross-examination in accordance with recognized judicial procedure was the right of any interested person present at the hearing. But, unless that right was asserted, it must be considered waived. While courts have a tender regard for the rights and privileges of citizens, there is no reason of public policy why they should invoke for him constitutional or statutory rights which he himself has voluntarily relinquished.

". . . And, if the failure to swear a witness in an ordinary civil trial, or even in a criminal trial, may be waived by failure to object or by express consent (70 C.J., Witnesses, S 654; 39 Am. Jur., New Trial, S532), clearly the right to have witnesses sworn and subjected to examination in an administrative hearing conducted without traditional court ritual must be considered as waived where interested parties participate therein without questioning the procedure. *People ex rel. Niebuhr v. McAdoo*, 184 N.Y. 304, 77 N.E. 260, 6 Ann. Cas. 56; *Proctor v. Smith*, Tex. Civ. App., 299 S.W. 663 . . ." [*Martin vs. Wolfson*, supra, p. 890; italics supplied]

It is finally contended by petitioner that private respondent Felicisimo T. San Luis is guilty of "turncoatism," in violation of Section 10, Article XII (C) of the 1973 Constitution in relation to Section 4 of Batas Pambansa Blg. 52 and P.D. No. 1661, as amended by P.D. No. 1661-A.

It is undisputed that private respondent won the gubernatorial office in the 1971 local elections under the banner of the Liberal Party and that when he filed his certificate of candidacy for governor on January 3, 1980 for the January 30, 1980 elections, he indicated his party affiliation as that of Kilusang Bagong Lipunan (KBL). Since 1971 however, "much water has passed under the bridge." A review of the political events prior and subsequent to the November 8, 1971 local elections becomes imperative to resolve the aforesaid issue.

"On March 16, 1967, Congress of the Philippines passed Resolution No. 2, which was amended by Resolution No. 4 of said body, adopted on June 17, 1969, calling a Convention to propose amendments to the Constitution of the Philippines. Said Resolution No. 2, as amended, was implemented by Republic Act No. 6132, approved on August 24, 1970, pursuant to the provisions of which the election of delegates to said Convention was held on

November 10, 1970, and the 1971 Constitutional Convention began to perform its functions on June 1, 1971. While the Convention was in session on September 21, 1972, the President issued Proclamation No. 1081 placing the entire Philippines under Martial Law. On November 29, 1972, the Convention approved its Proposed Constitution of the Philippines. The next day, November 30, 1972, the President of the Philippines issued Presidential Decree No. 73, 'submitting to the Filipino people for ratification or rejection the Constitution of the Republic of the Philippines proposed by the 1971 Constitutional Convention, and appropriating funds therefor,' as well as setting the plebiscite for said ratification or rejection of the Proposed Constitution on January 15, 1973. . ." (Javellana vs. The Executive Secretary, 50 SCRA 30, 55).

In a Presidential Degree dated December 31, 1972, the President issued P.D. No. 86 organizing Citizens Assemblies in each barrio in municipalities and in each district or ward in chartered cities "to broaden the base of citizens participation in the democratic process and to afford ample opportunities for the citizenry to express their views on important national issues." This was subsequently amended by P.D. No. 86-A on January 5, 1973 and P.D. No. 86-B on January 7, 1973 requiring the submission of important national questions or issues, among them the approval of the New Constitution, and the holding of a plebiscite on the New Constitution. On January 17, 1973, the President issued Proclamation No. 1102 "(A)nnouncing the ratification by the Filipino people of the Constitution proposed by the 1971 Constitutional Convention."

On March 31, 1973, this Court ruled in the above-quoted Javellana case that "there is no further judicial obstacle to the new Constitution being considered in force and effect."

The aforesaid new Constitution in its Transitory Provisions extended indefinitely the term of office of all incumbent public officers and employees at the time of the ratification of the said Constitution. Thus:

"All officials and employees in the existing Government of the Republic of the Philippines shall continue in office until otherwise provided by law or decreed by the incumbent President of the Philippines, but all officials whose appointments are by this Constitution vested in the Prime Minister shall vacate their respective offices upon the appointment and qualification of their successors" (Sec. 9, Art. XVII).

It is significant to point out at this juncture that a novel provision of the 1973 Constitution pertinent to the case at bar reads:

"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 months immediately preceding or following an election" (Sec. 10, Art. XIII[C]).

A casual perusal of Section 10, Article XII(C) of the 1973 Constitution would readily show that it imposes prohibition on two classes of individuals, namely:

- (1) an elective public officer who changes political party affiliation during his term of office; and
- (2) a candidate for any elective public office who changes political party affiliation within 6 months immediately preceding or following an election.

It is very much apparent from the pleadings filed by the petitioner that in seeking the disqualification of herein private respondent before respondent. COMELEC it heavily relied on the first clause of Section 10, Article XII(C)—prohibiting elective public officers from changing party affiliation during their term of office.

In arguing that private respondent is guilty of "turncoatism" under the second clause of Section 10, Article XII(C) of the 1973 Constitution, petitioner asserted:

"More than anything, it may not be safe to admit that private respondent, legally speaking, moved over to the

KBL on March 15, 1978, as contended. Not even if the genuineness of his purported Certificate of Affiliation with that organization is admitted. To be reckoned with, unfortunately for him, are the pronouncements of the Honorable Supreme Court in *Peralta vs. Comelec*, 82 SCRA 30 and *Lakas ng Bayan vs. Comelec*, 82 SCRA 196, to the effect that the KBL was not a political party in 1978, but only 'an umbrella organization,' as it specifically said:

'The KBL is NOT A POLITICAL PARTY. It is a group or aggrupation . . . , which is "a tempoalliance, union, or coalition . . of persons or parties for the purpose of joint action and combining their resources to support a common list of candidates" (*italics supplied*).'

"And so, insofar as the now involved constitutional ban is concerned, when did private respondent transfer affiliation to the KBL? Certainly, not before KBL became a political party 'only in late December, 1979, after the sudden calling of the elections for January 30, 1980,' by the words of Justice Teehankee in concurring in the *Reyes vs. Comelec* decision.

"Thus, did private respondent also violate the second phase of the same constitutional prohibition, that of changing party affiliation within six months before election" (pp. 6-7, Petitioner's Reply; pp. 123-124, rec.).

The above contention is not well taken. In the case of *Sevilleja vs. COMELEC* (Nos. 52793 and 53504, August 31, 1981), reiterated in *Geronimo vs. COMELEC* (No. 52413, September 26, 1981), this Court ruled:

". . . (T)he question of whether or not the KBL is a political party has been foreclosed 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 accreditation. Pursuant to this Resolution, KBL was duly accredited separately 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 labeled KBL; while the handful of opposition diehards 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 actuations 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)."

The hesitant stance taken by petitioner in assailing the candidacy of private respondent based on the second clause of Section 10, Article XII(C), prohibiting candidates for any elective public office from changing party affiliation

within 6 months immediately preceding or following an election is not surprising. It must be noted that as early as March, 1978, private respondent was undisputedly expelled from the Liberal Party together with other Liberal Party stalwarts as Governor Eduardo Joson of Nueva Ecija, Governor Faustino Dy of Isabela and Assemblyman Eddie Ilarde—about fifteen (15) months before the six-month prohibitive period commenced in July, 1979 (pp. 83-84, rec.). The expulsion was obviously due to private respondent's open support for and affiliation with the then newly organized Kilusang Bagong Lipunan (KBL). This is shown by the fact that he became Chairman of the KBL, Provincial Chapter in Laguna, and Chairman and Campaign Manager for Region IV-A consisting among others of the Southern Tagalog provinces and hence actively campaigned for KBL candidates in the April, 1978 elections for the members of the Interim Batasang Pambansa. It is likewise undisputed that private respondent has been a holder of a certificate of affiliation as a bona fide KBL member as early as of March, 1978.

Of course, there can be no doubt that had private respondent sought within six months before January 30, 1980, his expulsion from the Liberal Party to anticipate a forthcoming elections as alluded to by petitioner, the same is clearly an act of political opportunism. But such expulsion could not have been sought by private respondent as there was no certainty as to the calling of elections on January 30, 1980. As a matter of fact, the January 30, 1980 local elections was not even contemplated in April, 1978. In the language of petitioner, "(N)o one for a fact, then knew when the next elections would be called" (p. 6, Petitioner's Reply; p. 123, rec.).

The contention of petitioner that private respondent switched party affiliation during his term of office and hence guilty of "turncoatism" is not tenable. It is appropriate to note that private respondent was elected governor on November 8, 1971 for a four-year term or up to 1975. As correctly pointed out by private respondent, that the term of office of those elected in the November 1971 elections expired on December 31, 1975, the period intended by the framers to be covered by the constitutional prohibition, can be gleaned from among the questions asked during the February 27, 1975 referendum and from one of the whereases of P.D. No. 1296, also known as "The 1978 Election Code."

Thus, in the referendum of February 27, 1975, the following specific question was among the questions asked:

"ON LOCAL OFFICIALS

"At the expiration of the terms of office of your local elective officials on December 31, 1975, how do you want their successors chosen: to be appointed by the President or elected in accordance with the Election Code?" (Italics supplied).

And among the whereases of P.D. No. 1296, more popularly known as "The 1978 Election Code" reads:

"WHEREAS, the elective/local officials whose terms of office expired on December 31, 1975 were allowed to continue in office subject to the pleasure of the President;" (italics supplied).

Furthermore, in the case of *Seares vs. COMELEC* (L-34381, May 31, 1977, 77 SCRA 273, 278), this Court ruled that the four-year term of office of those elected in the November 8, 1971 elections already expired. In the aforesaid *Seares* case, a petition was filed on November 23, 1971 against private respondents Carmelo Barbero and Gavino Balbin, who were duly elected as governor and vice-governor respectively, assailing the minute resolution issued, by respondent COMELEC denying for lack of merit, petitioner's petition for the cancellation of the certificate of candidacy of private respondents and the minute resolution likewise issued by respondent COMELEC denying petitioner's motion for reconsideration subsequently filed.

In dismissing the said petition, this Court, speaking through then Associate Justice Felix Q. Antonio, stated inter alia: "and considering further, that the four-year term of office of those elected and proclaimed in the election of November 8, 1971, particularly the offices of Governor and Vice-Governor has already expired. We find the

present petition moot and academic" (*italics supplied*).

Noteworthy in the above-cited case is the fact that it was decided by this Court after December 1975 and over four (4) years prior to the January 30, 1980 local elections.

While there might be plausibility in the contention of petitioner that Section 9, Article XVII in the Transitory Provisions extended indefinitely the term of office of all incumbent public officers and employees, nonetheless, the same will not suffice to bring the case of the private respondent within the constitutional prohibition.

WE take the view that the evident intention of the new Constitution was to apply the prohibition as to party switching (turncoatism) to the term of office for which one was previously elected in relation to the political party under which he ran and won. In the present case, the prohibition should only apply to the term for which private respondent was elected governor as a Liberal Party candidate—from January 1, 1972 to December 31, 1975.

It must be noted that the new Constitution was ratified on January 17, 1973 when the term of office of local elective public officials, who were elected as such under the two major political parties, the Nacionalista Party and Liberal Party, had not expired. Having been elected in the November, 1971 local elections, their term of office expired on December 31, 1975.

It is worth noting that private respondent was allowed to continue in office at the pleasure of the President by virtue of the provisions of the Transitory Provisions and supplemented by the results of the referendum on February 27, 1975, thru which the people opted for appointment by the President as the manner of choosing the successors of local officials whose terms were to expire on December 31, 1975.

The period beyond December 31, 1975 is no longer within the coverage of the phrase "term of office" for which respondent was elected as a Liberal candidate for purposes of applying the constitutional prohibition.

Thus, private respondent argued that "(E)ven granting *arguendo* therefore, that private respondent changed political party affiliation when the constitutional prohibition was already in effect, and not before, as discussed earlier in this Comment, still it could not be said that he changed affiliation during the term for which he was elected Governor as a Liberal, which is what is obviously contemplated in the prohibition. A public officer is prohibited from changing political party affiliation during his term of office to prevent opportunism of one who after having been catapulted to office with the help of a political party simply abandons his party and switches to another, while serving his term, thereby ignoring the meaning of the electoral results and making a mockery of the popular will. But if the change took place after the expiration of the term to which he had been elected under a particular party, as in this case, where private respondent ran as a KBL four (4) years after the expiration of his four-year term on December 31, 1975, then the prohibition does not apply, for the reason that, that part of his term from December 31, 1975 up to March 2, 1980, was not by virtue of his having been elected as a Liberal, but because he was allowed to continue in office 'at the pleasure of the President,' who *apropos*, is the titular head of the KBL party" (pp. 24-25, Private Respondent's Comment; pp. 68-69, *rec.*; *italics supplied*).

In fine, what is essential is the political party of the elective public official as of the date of his election and during the four-year term to which he had been elected and not his political inclinations after the said four-year term expires.

Finally, to make the constitutional prohibition applicable to the period beyond the four-year term to which public officials were elected in the 1971 local elections under their respective political parties would work manifest injustice and unduly impinge on the freedom of association guaranteed to all individuals. Incumbent public officials who ran during the last election (1971 elections) prior to the 1973 Constitution which embodies the said novel provision, would be undoubtedly unjustifiably prejudiced if the party under the banner of which they ran

and won, would no longer participate in the succeeding elections after the effectivity of the new Constitution, such as the Liberal Party in the case at bar which boycotted all elections during and after the lifting of martial law. In the present case, it appears that most of the prominent LP leaders who participated in the elections held after the effectivity of the new Constitution, campaigned and ran under new opposition groups such as the Lakas ng Bayan (LABAN), National Union for Liberation (NUL), Mindanao Alliance (MA), Puyon Bisaya, Bicol Saro and other new political aggrupations. This We believe was not the manifest intention of the framers.

Indeed, "of two reasonably possible constructions, one of which would diminish or restrict fundamental right of people and the, other of which would not do so, latter construction must be adopted" (16 C.J.S., 69, footnote). Hence, the more logical interpretation is that which gives effect to Section 10 of Article XII(C) of the 1973 Constitution and does not violate the individual's basic right to association.

WHEREFORE, THE PETITION IS HEREBY DISMISSED. NO COSTS.

SO ORDERED.

Fernando, C.J., Aquino, Concepcion Jr., Guerrero, De Castro, Melencio-Herrera, Plana, Escolin and Gutierrez, Jr., JJ., concur.

Teehankee, Abad Santos and Vasquez, JJ., took no part.

Relova, J., is on leave.

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