

APOLINARIO R. ESQUIVEL, PETITIONER, VS. THE COMMISSION ON ELECTIONS AND ELPIDIO O. CUCIO, RESPONDENTS.*G.R. No. 53475. April 28, 1983*

Ponente: ESCOLIN, J.

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In a pleading styled "Supplemental Petition and/or Motion for Relief" filed under G.R. No. 53475, entitled "Apolinario R. Esquivel, petitioner, vs. The Commission on Elections and Elpidio O. Cudio, respondents," Elpidio O. Cudio seeks to bar respondent COMELEC from taking cognizance of E.P. Case No. 80-107, an election protest ad cautelam, on the ground of lack of jurisdiction, said protest having been allegedly instituted beyond the 10-day period prescribed under Section 189 of the Election Code of 1978.[1]

Elpidio O. Cudio and Apolinario R. Esquivel were the official candidates of the Kilusang Bagong Lipunan and the Nacionalista Party, respectively, for the office of City Mayor of Palayan, Nueva Ecija, in the January 30, 1980 local elections. On February 1, 1980, the City Board of Canvassers proclaimed Esquivel as mayor-elect. Upon petition of Cudio, however, the COMELEC set aside said proclamation on the basis of its findings that the City Board of Canvassers had been illegally constituted. Thus, in its resolution dated March 25, 1980,[2] the COMELEC ordered that:

"[1] a new City Board of Canvassers for Palayan City shall be constituted which shall convene immediately to undertake in conformity with this resolution the canvass of the results of the election in Palayan City for city officials, and thereafter proclaim the winners;

"[2] The City Board of Canvassers shall use the Election Returns, COMELEC copy, and in case the COMELEC copy is not available, use the copy for the City Board of Canvassers."[3]

Pursuant to this COMELEC resolution, a new board of canvassers was organized and a recanvassing held, resulting in the proclamation of Cudio as mayor-elect on March 27, 1980.[4]

On the following day, March 28, 1980, Esquivel filed with this Court a petition for certiorari and injunction, docketed as G.R. No. 53475, to annul said proclamation and to enjoin Cudio from taking his oath of office as mayor. On the same date, this Court en banc issued a temporary restraining order, enjoining Cudio from taking his "oath of office, or in the event you have done so, from assuming the position of mayor of Palayan City, Nueva Ecija, until further orders from this Court."

On October 14, 1980, We issued a resolution of the following tenor:

"G.R. No. 53416 [Apolinario Esquivel vs. Commission on Elections] and G.R. No. 53475 [Apolinario Esquivel vs. Commission on Elections, et al.]—

.....

"In regard to G.R. No. 53475, the Court likewise resolved to DISMISS the petition and to ORDER petitioner

Esquivel to forthwith surrender the office of Mayor of Palayan City to respondent Elpidio O. Cucio, regardless of the Court's restraining order of March 28, 1980, which is hereby lifted effective immediately, it appearing that the resolution of the respondent Commission of March 25, 1980, contrary to the contentions of petitioner in his Reply of May 28, 1980, cannot, in the mind of the Court, be characterized as having been issued illegally nor in grave abuse of discretion, and, furthermore, the actuations of the Board of Canvassers which led to the proclamation of respondent Cucio as mayor of Palayan City cannot be passed upon by this Court without their having been brought to the attention and ruled upon by the respondent Commission, which in effect, is an omission to exhaust administrative remedies, the Commission on Elections being the constitutional body primarily charged with the authority to safeguard the cleanliness and orderliness of elections, subject only to review by this Court, in cases of unconstitutionality and grave abuse of discretion, which has not been shown here, particularly in regard to the proclamation of respondent, it being clear, that petitioner did not even bring his complaint against the same before the Commission."

Following receipt of the above-quoted resolution, Esquivel filed with the COMELEC a petition dated October 24, 1980 which was in effect a joint petition for: [1] "Annulment of Proclamation of Canvassers docketed as PP Case No. 180-A and assigned to the 1st Division, and [2] For an "Election Protest ad cautelam," E.P. No. 80-107, which was raffled to the 3rd Division.

On December 5, 1980, Cucio filed an "Answer with Special and Affirmative Defenses and Counter Protest," raising as issues the inconsistency between an action for annulment of a proclamation and an election protest, as well as the late filing of such protest.

On January 28, 1981, Cucio further filed a "Motion to Consider Supplemental and Affirmative Defenses as Grounds for Dismissal and for Immediate Resolution Thereof." The hearing on this motion was conducted by the COMELEC en banc on January 29, 1981, after which the parties were required to submit their respective memoranda.

On May 24, 1981, the COMELEC issued an en banc resolution, deferring action on Cucio's motion to dismiss until after trial on the merits because the grounds relied upon did not appear to be indubitable.

On July 29, 1981, the COMELEC [1st Division], relying on this Court's resolution of October 14, 1980, dismissed PP Case No. 180-A, [the action for annulment of proclamation]. The COMELEC's resolution stated in part:

"To give merit to the instant petition in the above-entitled case asking for the annulment of the proclamation of respondent Cucio based on the aforesaid resolution of the Supreme Court would in effect reopen the original case docketed as PP Case No. 180 and once more litigate on issues already passed upon by this Commission and affirmed by the Supreme Court. If this were allowed there would be no end to this controversy. Such cannot be countenanced.

"The Commission has taken cognizance of the Protest Ex Abundante Cautela which petitioner [Cucio] filed on February 12, 1980. This election contest falls under the jurisdiction of this Commission. The allegations relating to rampant vote-buying, terrorism, etc. shall be ventilated properly and adequately when the protest is heard.

"Now, petitioner Esquivel himself has filed an 'election protest ad cautelam' docketed as E.P. Case No. 80-107. Both protests, namely, EPC No. 80-16 [Cucio v. Esquivel] and EPC No. 80-107 [Esquivel v. Cucio] may be heard jointly as to expedite the termination thereof." [Annex 'C', Supplemental Petition].

Esquivel filed a motion for reconsideration, but the same was denied on January 11, 1982, the COMELEC [First Division] holding that:

"This pre-proclamation case is only summary in nature and will not terminate with conclusiveness the controversy between the parties. Besides, the Supreme Court has ruled in the cases of *Venzuela vs. Comelec*,

G.R. No. 53532, July 25, 1980; Villegas vs. Comelec, G.R. No. 52563, September 4, 1980; and Arcenas vs. Comelec, G.R. No. 54035, November 28, 1980, that 'after an election duly held and a proclamation thereafter made, a pre-proclamation controversy should no longer be viable.'

"At any rate, the petitioner herein has still a remedy, that is, the prosecution of his cause in EP Case No. 80-107, wherein the issues he has now raised in his motion for reconsideration may likewise be threshed out there and decided once and for all with finality." [Annex "4"-Comelec].

Thus, Esquivel's action for annulment of proclamation or canvass, PP Case No. 180-A, was laid to rest.

Meanwhile, as early as August 1981, the COMELEC [3rd Division] had set for hearing EP Case No. 80-107 [Esquivel's election protest]. At different times and for various reasons, however, the scheduled hearings were postponed upon motion of Cucio, until December 21, 1981 when the hearing was set on January 19 to 21, 1982, without further postponement.

Before the scheduled hearing, or on January 13, 1982, Cucio filed the instant petition before this Court, seeking dismissal of Esquivel's election protest, docketed as E.P. Case No. 80-107. Invoking the provisions of Section 189 of the 1978 Election Code to the effect that an election contest of any city official "shall be filed with the Commission by any candidate for the same office within ten days after the proclamation of the results of the election," Cucio questions the timeliness of his opponent's protest on the ground that the same was filed only on October 14, 1980, or 7 months after his (Cucio's) proclamation by the second Board of Canvassers on March 27, 1980. He submits that respondent COMELEC has no jurisdiction to take cognizance of said protest, the 10-day period under Section 189 being mandatory and jurisdictional in character.

The argument overlooks the events which supervened after his proclamation on March 27, 1980. As heretofore stated, Esquivel filed his petition in G.R. No. 53475 on March 28, 1980, i.e., the day following Cucio's proclamation. On the very same day, this Court issued an order restraining the latter from taking his oath of office and/or assuming the position of mayor. Thus, from March 27 until October 14, 1980, when said restraining order was lifted, Esquivel had assumed and discharged the office of mayor of Palayan City. Under this factual setting, it would have been illogical and absurd for Esquivel to have filed an election protest over an office which he himself was occupying at the time. Indeed, he had neither cause nor reason to have sought such recourse.

We therefore sustain Esquivel's submission that the 10-day period under Section 189 of the Election Code should be considered as having been suspended during the pendency of G.R. No. 53475, and that said statutory period be computed from October 15, 1980, the day Esquivel received notice of the dismissal of his petition in G.R. No. 53475. This view finds support in *Bacayo vs. COMELEC, et al.*, where we ruled:

"G.R. No. 53499 [Liberato Bacayo vs. Comelec, et al.- Respondent Comelec's motion for extension of time to file comment for twenty [20] days from August 18, 1980 is GRANTED. Upon consideration of the petition and the comment filed by the Solicitor General on behalf of respondent Comelec, the Court resolved [a] to DISPENSE with the comment of private respondent and [b] to DISMISS the petition for lack of merit. The questioned Comelec Resolution of March 4, 1980 providing that 'in order not to precipitate problems in certain localities where the winning candidates have pending pre-proclamation cases, the Commission en banc Resolved, as it hereby resolves to temporarily proclaim those winning candidates notwithstanding the pendency of the pre-proclamation cases, but without prejudice to the Commission's setting the cases for hearing of said cases being continued and heard by the Commission. The resolution shall suspend the running of the prescriptive period provided under Section 189 and 190 of the 1978 Election Code on the Filing of the protest within ten [10] days after the proclamation of the candidates-elect until such time as the Commission shall have finally decided the pre-proclamation controversy' cannot be held to be an encroachment of legislative powers as contended by petitioner.

"The suspension of the 10-day statutory period for the filing of an election protest until such time as the Commission on Elections has finally decided the pending pre-proclamation controversy is but logical and just, since if the protestant prevails in the pre-proclamation controversy, there would be no further need for him to file a regular election protest. The proclamation of herein petitioner became permanent and final only on February 26, 1980 when the contest of herein respondent Regalado in the pre-proclamation controversy was dismissed by the Comelec and consequently his election protest as filed with the CFI of Misamis Occidental on March 4, 1980 was well within the 10-day statutory period for the filing of such protest.

"This Court has since the case of Benjamin S. Abalos vs. Ernesto S. Domingo [G.R. No. 52665, Resolution of February 29, 1980] deemed suspended the 10-day statutory period for the filing of an election protest during the pendency of a pre-proclamation controversy and in all subsequent cases, the latest of which is its decision of July 25, 1980 [G.R. No. 53532, Noli M. Valenzuela v. Comelec] wherein the losing party in the pre-proclamation controversy was granted 'a period of ten [10] days from receipt of this Resolution [of dismissal] to file before the proper court a quo warranto suit or election protest.'"

In fine, to deny Esquivel recourse to an election protest because of an evident oversight in Our resolution of October 14, 1980 in G.R. No. 53475 to specifically grant him a period of 10 days within which to file such protest, would be to effectively deprive him of the fundamental right of due process.

WHEREFORE, this petition is dismissed and the temporary restraining order of January 20, 1982 is hereby lifted. The COMELEC is ordered to proceed with the trial of E.P. Case No. 80-107 without further delay. No costs.

SO ORDERED.

Teehankee, Aquino, Abad Santos, De Castro, Melencio-Herrera, Plana, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

Fernando, C.J., Makasiar, Concepcion Jr., and Guerrero, JJ., took no part.

[1] Section 189 of the 1978 Election Code provides: "Filing of Petition. A sworn petition contesting the election of any member of the interim Batasan Pambansa or any provincial or city official shall be filed with the Commission by any candidate for the same office within ten days after the proclamation of the results of the election."

[2] p. 56, Rollo.

[3] pp. 71-72, Rollo.

[4] Vide, Certificate of the 2nd Board of Canvassers dated March 27, 1980, p. 79, Rollo.

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