

NOLI M. VENEZUELA, PETITIONER, VS. COMMISSION ON ELECTIONS, AND ARTEMIO R. SALDIVAR, RESPONDENTS.*G.R. No. 53532. July 25, 1980*

Ponente: FERNANDO, C.J.

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Once again, what was characterized in *Reyes v. Commission on Elections*[1] an "innovative and mandatory" provision[2] of the Constitution, prohibiting the change of party affiliation by an elective officer during the term for which he was elected, is invoked in this appeal by certiorari. A peculiar feature, however, was that such a question was not raised until after the election, to be more precise, on February 6, 1980, the first petition for disqualification being based on private respondent Artemio R. Saldivar facing three criminal charges before the Sandiganbayan.[3] As admitted by petitioner-appellant, there was already a dismissal on February 4, 1980 but he had not as yet received a copy when he included such a ground.[4] Then on February 19, 1980 he filed with respondent Commission on Elections this present petition for disqualification based on the above provision.[5] Again, he was unsuccessful respondent Commission on Elections, without any hearing, found it without any merit. Hence this appeal by certiorari.

Respondent Commission on Elections and private respondent Saldivar were required to comment. As could be expected, the prayer in both Comments was for the dismissal. It is undisputed, as alleged by private respondent, that he was duly proclaimed Mayor of Pozorrubio, Pangasinan by the board of canvassers on February 6, 1980.[6] In the Comment of the Solicitor General[7] for respondent Commission on Elections, the prayer was that no grave abuse of discretion was shown. The Comments were considered as the respective answers and the case deemed submitted for decision, after the Reply to Comments of respondents was received by this Court.

In such Reply, the ruling in the aforesaid *Reyes* decision was invoked. It was contended that there being no hearing on the question of disqualification, the order of respondent Commission on Elections now assailed, is devoid of validity, violative as it is of one of the cardinal requirements of due process, so emphatically stressed in the leading case of *Ang Tibay v. Court of Industrial Relations*. [8] It does not admit of doubt that in *Reyes* as well as in *Pimentel v. Commission on Elections*, [9] the case was thereafter remanded to respondent Commission on Elections, so that the matter of disqualification could be fully threshed out after a hearing to be conducted with due observance of procedural due process. While this contention finds support in the above decisions, there is a factor that militates against it. It was not until February 6, 1980, as admitted in the very petition itself, that the issue of disqualification was raised. The view, therefore, that the present proceeding cannot with precision be described as a pre-proclamation controversy, considering that on the very same day, private respondent Saldivar had already been proclaimed, has much to commend it. Moreover, it would save the time and energy of the litigants as well as respondent Commission, and eventually this Court in view of its appellate jurisdiction, if the matter were passed upon in an election protest or quo warranto petition in the proper court or agency, the office involved being that of municipal mayor. [10] As of now, judging from the petitions still being elevated to this Tribunal, respondent Commission is still swamped with such controversies.

WHEREFORE, the petition is dismissed. Petitioner is granted a period of ten days from receipt of this resolution to file before the proper court a quo warranto suit or an election protest. No costs.

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

Teehankee, J., concurs in a separate opinion.

Guerrero, J., on official leave.

Abad Santos, J., did not take part.

[1] G.R. No. 52699, May 15, 1980.

[2] According to Article XII, C, Section 10 of the Constitution: "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."

[3] Petition, par. 4.

[4] Ibid.

[5] Ibid., par. 5.

[6] Comment of private respondent, par. 5.

[7] Solicitor General Estelito P. Mendoza was assisted by Assistant Solicitor General Nathanael P. de Pano, Jr. and Trial Attorney Ralph C. Lantion.

[8] 69 Phil. 635 (1940).

[9] G.R. No. 52428, February 21, 1980.

[10] Cf. Abalos v. Domingo, L-52665 and Sec. 189 of the 1978 Election Code.

SEPARATE OPINION

TEEHANKEE, J.:

The Court's Resolution orders the dismissal of the petition which seeks the reversal of the Comelec's action refusing to disqualify respondent Artemio R. Saldivar from the position of mayor of Pozorrubio, Pangasinan to which he was elected in the January 30, 1980 elections on the ground of turn-coatism (in that he was elected as a Nacionalista Party member to the same position in 1971 but switched to, and filed his certificate of candidacy as, a KBL Party member in the January 30, 1980 elections), but grants petitioner a ten-day period from notice thereof within which to file before the proper court a quo warranto suit or an election protest.

I concur. As stated by me in the case of Renato U. Reyes vs. Comelec[1], "(I) have previously urged that all such pre-election cases seeking to disqualify the winner on the ground of alleged turncoatism should be ordered dismissed after the elections, subject to the filing of an appropriate quo warranto action or election protest against the winner in the appropriate fo-um (the Comelec for provincial and city officials and the proper Court of First Instance for municipal officials[2]). This coincides with the President's own view as he was reported in the February 27, 1980 newspapers 'to have ordered the lawyers of the KBL [Kilusang Bagong Lipunan] to withdraw all disqualifica-tion charges to allow already proclaimed opposition candidates involved in such cases to assume office,' reserving the right to file an election protest (although such Presidential orders seem to have been ignored

since I am not aware of any of the numerous disqualification cases before us that have been so withdrawn)."

I added therein that the people's will and undeniable right to have officials of their unfettered choice would thus be respected pending the final determination of the cases remanded to the Comelec or election protests filed with the proper court and cited seven imperative considerations and reasons (herein reproduced by reference) why the winning candidate who has re-ceived the approbation and mandate of the electorate should be entitled to due process and a full-dress hearing in regular proceedings with confrontation and examination of witnesses rather than to have the people's choice unceremoniously ousted in summary pre-proclamation proceedings decided in a battle of conflicting affidavits.[3]

A final note. Respondent Comelec in its Comment of May 8, 1980 filed by Solicitor General Estelito P. Mendoza takes the position that "(I)t is worth noting that the people of Pozorrubio, Pangasinan have spoken and their choice to be their mayor is the private respondent. The will of the electorate of Pozorrubio, Pangasinan should be respected.

"In *Canceran v. COMELEC*, 107 Phil. 607, this Honor-able Court held that the courts must give the voice of the electorate efficacy and not stifle or frustrate it. Also of particular relevance is the ruling of this Honorable Court in *Lino Luna v. Rodriguez*, 29 Phil. 208, and *De Guzman v. Board of Canvassers*, 48 Phil. 211:

'It has been announced in many decisions that the rules and regulations for the conduct of elections are mandatory before the election, but when it is sought to enforce them after the election, they are held to be directory only, if that is possible especially where, if they are held to be mandatory, in-nocent voters will be deprived of their votes without any fault on their part. The various and numerous provisions of the Election Law were adopted to assist the voters in their participation in the affairs of government and not to defeat that object.'"[4]

It is to be devoutly wished that the Comelec apply equally and consistently this salutary position in all pending pre-proclamation case (many of which are still pending in this Court involving on the whole opposition party winners sought to be disqualified). If this were to be done, Comelec as represented by the Solicitor General should forthwith recall and revoke its pre-proclamation, and in several instances post-election, disqualification on alleged turncoatism of the people's choice and winning candidates, leaving the losers to raise the same question in a regular quo warranto or election protest within a ten-day grace period, as been done in the case at bar.

[1] G.R. No. 52699, promulgated May 15, 1980.

[2] Sections 188 and 189, P.D. 1296 (1978 Election Code).

[3] See also my separate opinions in *Pimentel vs. Comelec*, G. R. No. 52428, Feb. 21, 1980, and *Nepomuceno vs. Comelec*, G. R. Nos. 52427 and 52506, May 15, 1980.

[4] At pages 4-5; emphasis supplied.

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