

FERNANDO LAGUDA, PETITIONER, VS. COMMISSION ON ELECTIONS AND MUNICIPAL BOARD OF CANVASSERS OF LA LIBERTAD, NEGROS ORIENTAL, RESPONDENTS.

G.R. No. 53747. February 20, 1981

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

This proceeding for injunction was filed by petitioner Fernando Laguda, who was, prior to the 1980 municipal election, the Mayor of La Libertad, Negros Oriental, but who failed in his attempt at reelection, to enjoin respondent Commission on Elections, as well as its Municipal Board of Canvassers, from continuing with the canvassing of votes in certain precincts, imputing certain irregularities. What was mainly stressed was that the voting therein was actually conducted up to January 31, 1980, beyond the date fixed for the holding of reelection without any authority from respondent Commission. It was not until May 2, 1980 that the petition was filed.

A restraining order was issued by resolution of May 8, 1980 and respondents were required to answer. In the Answer filed by respondent Commission on Elections, it was alleged that the grounds for enjoining the canvassing "are proper grounds for an election protest or appropriate election contest wherein [petitioner] may ventilate his grievances." [1] For, as pointed out, "the nature of the alleged electoral frauds or irregularities, not to mention the alleged threats and presence of subversive and terrorist elements during the election set forth in his petition before respondent Commission shows that the same can not be properly and adequately ventilated in a summary proceeding but in an appropriate election contest." [2] Moreover, according to the Answer, there was in the meanwhile a continuation of the canvassing of the votes cast and thereafter the proclamation on May 5, 1980 of the winning candidates, the restraining order issued by this Court not having been received until a week later on the twelfth of such month. [3] Then came this concluding portion of such an Answer: "It is thus clear from the foregoing that what petitioner seeks in the petition at bar from this Honorable Court is now moot and academic as the act or acts sought to be enjoined in the instant petition is now a *fait accompli*. Indeed, as aforesaid, petitioner's remedy is to institute an appropriate election contest or petition under Section 190 and related provisions of the 1978 Election Code, assuming, *ex gratia argumenti* that he has valid grounds therefor." [4] The prayer is for the dismissal of the petition for lack of merit as well as for having become moot.

The dismissal of the petition is warranted.

- As is quite obvious from the Answer, an inquiry on the grounds relied upon to enjoining the canvassing of election returns would necessarily entail the presentation of conflicting testimony. To pass on such a complex matter in a summary proceeding would be to run the risk that the decision arrived at would not reflect the realities of the situation. It could even be susceptible to the charge that the whole truth did not come to light. Under the circumstances, an election protest clearly is the more appropriate remedy.

- This is one instance where the basic principle first announced in *Venezuela v. Commission on Elections* [5] that in pre-proclamation controversies elevated to this Tribunal, where after the holding of the 1980 general election followed by the canvassing and thereafter the proclamation, as it did happen here, the proper remedy

is an election protest or a quo warranto proceeding, whichever may be appropriate, except, as noted in the latest decision of *Aguinaldo v. Commission on Elections*,^[6] where prior to such election an action had been filed before the Commission on Elections, with a decision having been rendered.

- It may be said likewise that the question at issue has become moot and academic as apparently the Mayor-elect had assumed his position. No useful purpose would thereby be served by granting the remedy sought to enjoin the canvassing in certain precincts. It is noteworthy that after the Answer was filed with the allegations therein mentioned, including the proclamation and the assumption of office, the petitioner did not even seek to file a reply. There was then an implied admission.

WHEREFORE, the case is dismissed for lack of merit and for having become moot and academic.

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

Concepcion, Jr., J., did not take part.

[1] Answer, Special and Affirmative Defenses, par. 5.

[2] Ibid.

[3] Ibid, pars. 7-8.

[4] Ibid, par. 9.

[5] G.R. No. 53532, July 25, 1980.

[6] G.R. No. 53953, January 5, 1981.

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