

RODOLFO DE LEON, PETITIONER, VS. CONRADO LINDO AND THE HONORABLE JUDGE PABLO D. SUAREZ, RESPONDENTS.*G.R. No. 53914. September 30, 1984*

Ponente: FERNANDO, C.J.

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An indication of the intensity of the rivalry for the position of Mayor of Ternate, Cavite, between petitioner Rodolfo de Leon, the KBL official candidate, and respondent Conrado Lindo, a KBL member who ran as an independent candidate, may be discerned from the fact that the former filed two suits against the latter in this Court. In our decision promulgated last April 30,[1] we affirmed a decision of respondent Commission on Elections dismissing a case for disqualification against private respondent Lindo on the ground of turncoatism. For petitioner had been proclaimed mayor after the January 30 election, had assumed such position, and has been discharging its functions. Under the circumstances, the Venezuela ruling called for application. As qualified in *Aguinaldo v. Commission on Elections*,[2] a pre-proclamation controversy is no longer viable if, after the election for local officials, the winning candidate had been proclaimed and there was no pending petition for disqualification before this Court on January 30.

This petition for certiorari and mandamus with a prayer for a restraining order arose from an order of respondent Judge, the late Pablo D. Suarez, granting private respondent a reasonable period of time to file an electoral protest. It reads as follows: "The Clerk of Court is hereby ordered to include among undocketed cases, in the meanwhile, the significance that Protestant Conrado C. Lindo has been granted an additional and reasonable period to register an Election Protest against Protestee Rodolfo de Leon, corresponding with the previous Local Elections for Ternate, Cavite." [3] It is contended by petitioner that on its face it is violative of this provision of the 1978 Election Code: "A sworn petition contesting the election of a municipal or municipal district officer shall be filed with the proper Court of First Instance by any candidate for the same office who has duly filed a certificate of candidacy, within ten days after the proclamation of the election." [4] More specifically, there was a disregard of the ten-day period imposed by law.

Then, soon after, came a Supplemental Petition. It was therein alleged that petitioner was not aware of an order of respondent Judge denying his motion for reconsideration and at the same time proclaiming private respondent Lindo duly elected winner for the office of the Mayor of Ternate until after the original petition was filed. He stressed anew the jurisdictional infirmity of the actuation of the lower court. He was specially vehement in his attack on the proclamation of private respondent as the duly elected Mayor of Ternate, considering that he had been proclaimed, had assumed the office, and has been discharging his duties as such. The dispositive portion of this later order of respondent Judge reads as follows: "[Wherefore], as prayed for, without prejudice to the ultimate decision congruent with the present election protest; the Court hereby declares and proclaims Protestant Conrado Lindo duly elected winner for the Office of Mayor of the Municipality of Ternate, Province of Cavite, corresponding with the local elections for the Municipality of Ternate, Province of Cavite, effectively as of January 30, 1980; considering the prior nullity of the election and proclamation of Protestee Rodolfo de Leon.

Protestant Conrado Lindo has no more lawful inhibitions to immediately assume the Office of Mayor of the Municipality of Ternate, Cavite, effective today, after taking his Oath of Office as such Mayor of Ternate, Cavite; while Protestee Rodolfo de Leon is hereby temporarily restrained from further continuing to discharge his prior duties as former Mayor of Ternate, Cavite, until further orders from this Court; when he shall have proved that he has a better right to it than Protestant Conrado Lindo during the hearings of the present protest."[5]

Comment was required of respondents, and a temporary restraining order was issued after the filing of the petition. Comment was likewise required of respondents in the Supplemental Petition. In the second of such Comments submitted after the Supplemental Petition, the grant of the additional and reasonable period to private respondent to institute an election protest was justified as within the sound discretion of a court of justice. That was their submission likewise in the first Comment submitted. The prayer was for the dismissal of the petition so that the resumption of the election protest could be ordered immediately.

Such Comment was considered as the answer and the case was deemed submitted for decision.

We sustain respondent Judge in granting the additional period. We rule against that portion of his order allowing private respondent to occupy the office of Mayor. In that sense, the restraining order continues until the final disposition of this litigation.

It was the existence of problems, a number of them novel in character, that arose after the elections for local government in 1980, that led to the exercise by this Court of its equitable powers. Accordingly, in appropriate cases, an objection raised on purely legal grounds based on the strict letter of the law was not deemed controlling. What is undeniable is that ever since *Venezuela v. Commission on Elections*,^[6] decided on July 25, 1980, this Court has allowed the losing party a reasonable period usually ten days within which to file an election protest. That solution appears to be the most just and fair under the circumstances. It is a further assurance that the wishes of the electorate would not be disregarded by what would amount to a definitive bar on determining who was the real people's choice. In *Venezuela*, as well as in *Agcaoili v. Santos and Commission on Elections*,^[7] and in *Disini v. Commission on Elections*,^[8] a period of ten days was the one granted. In *Faderanga v. Commission on Elections*,^[9] a fifteen-day period was granted the losing party. In sustaining respondent Commission on Elections in the April decision of this Court, between petitioner de Leon and private respondent Lindo, it was made clear in the opening paragraph of the opinion citing *Venezuela* - the doctrine being given a more explicit form in *Aguinaldo v. Commission on Elections*^[10] - that it is a "generally accepted principle that a pre-proclamation controversy should be laid to rest [at a certain stage] there being the remedy of a protest or a quo warranto proceeding that could be utilized."^[11] The election protest actually having been filed and having been acted upon by respondent Judge, it would not be in consonance with equity if at this stage it would not be allowed to continue. All things considered, justice, another name for equity, would best be served by allowing the lower court, acting through the successor of respondent Judge, to continue hearing such protest until its final disposition.

WHEREFORE, the petition for certiorari is dismissed insofar as it would annul and set aside the challenged orders of respondent Judge continuing with hearing the election protest. It is granted insofar as it would make permanent the restraining order preventing private respondent, Conrado Lindo, from discharging the Office of the Mayor of Ternate in the meanwhile, petitioner being entitled to continue doing so. No costs.

Abad Santos, Melencio-Herrera, Plana, Escolin, Relova, Gutierrez, Jr., De La Fuente, and Cuevas, JJ., concur.

Teehankee and Makasiar, JJ., in the result.

Aquino, J., did not take part.

Guerrero and Concepcion, Jr., JJ., on leave.

[1] De Leon v. Commission on Elections, G.R. No. 56968, April 30, 1984, 129 SCRA 117.

[2] G.R. No. 53953, January 5, 1981, 102 SCRA 1.

[3] Annex D to Petition.

[4] Article XVIII, Section 190 of the 1978 Election Code.

[5] Annex O of Supplemental Petition, 6-7.

[6] G.R. No. 53532, 98 SCRA 790.

[7] G.R. No. 52791, February 26, 1981, 103 SCRA 350.

[8] G.R. No. 52502, December 30, 1982, 119 SCRA 511.

[9] G.R. No. 55938, June 26, 1981, 105 SCRA 123.

[10] G.R. No. 53953, January 5, 1981, 102 SCRA 1.

[11] 129 SCRA 117, 118.

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