

**SANDE AGUINALDO, NARCISO MENDIOLA, OLYMPIO MEDINA,
ROLANDO HERNANDEZ AND LEOPOLDO PINON, PETITIONERS, VS.
HONORABLE COMMISSION ON ELECTIONS AND SATURNINO V.
TIAMSON, RESPONDENTS.**

G.R. No. 53953. January 05, 1981

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

Two circumstances decisive in their significance stand out in this certiorari proceeding against respondent Commission on Elections. It was filed only on May 30, 1980, after an election duly held and after the proclamation of the victorious candidate for Mayor, private respondent Saturnino Tiamson. Moreover, as far back as March 10, 1980, an action for quo warranto had been instituted by his opponent Cesar Villones. The plea for its dismissal made in the comments both of the Solicitor General,[1] appearing for respondent Commission, as well as respondent Tiamson, considered as answers, must therefore be sustained. Since *Venezuela v. Commission on Elections*,[2] this Court has invariably adhered to the principle that after the holding of the January 30, 1980 election, and a proclamation thereafter made, a petition to disqualify a candidate based on a change of political party affiliation within six months immediately preceding or following an election,[3] filed with this Court after January 30, 1980, arising from a pre-proclamation controversy, should be dismissed without prejudice to such ground being passed upon in a proper election protest or quo warranto proceeding. Where, however, such constitutional provision had been seasonably invoked prior to that date with the Commission on Elections having acted on it and the matter then elevated to this Court before such election, the issue thus presented should be resolved.

The facts are undisputed. In the January 30, 1980 election, there were three candidates, Saturnino Tiamson of the Nacionalista Party, Cesar Villones of the Kilusang Bagong Lipunan and Edgardo Samson of the National Union for Liberation.[4] After the canvassing of the election returns, it was shown that private respondent Tiamson had more than 117 votes over the candidate Villones.[5] On February 29, 1980, he was proclaimed as Mayor by the Municipal Board of Canvassers and on March 3, 1980 assumed such position.[6] On March 10, 1980, as mentioned, Villones filed a quo warranto petition based on the above disqualification provision of the Constitution.[7] This certiorari proceeding, as noted at the outset, was not filed until May 30, 1980, directed against an order of respondent Commission on Elections denying the motion for reconsideration of a previous order of dismissal of a petition to disqualify private respondent Tiamson.[8]

It is thus manifest why this certiorari proceeding must be dismissed. The ruling in *Venezuela* was applied in *Villegas v. Commission on Elections*,[9] *Potencion v. Commission on Elections*,[10] *Arcenas v. Commission on Elections*,[11] and *Singco v. Commission on Elections*. [12] A citation from *Arcenas* finds pertinence: "Nor does a decision of this character detract from the binding force of the principle announced in *Reyes v. Comelec*, that the provision on disqualification arising from a change in a political party affiliation by a candidate within six months is both 'innovative and mandatory.' As should be clear, the issue of disqualification has not been rendered moot

and academic, only the remedy to be pursued is no longer the pre-proclamation controversy." [13] So it must be in this case with a quo warranto petition having already been filed as far back as March 10, 1980, by the party most interested, no less than the losing candidate, Cesar Villones.

WHEREFORE, the petition is dismissed for lack of merit. No costs.

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

Teehankee, J., concurs in a separate opinion.

Abad Santos, J., is on leave.

[1] Solicitor General Estelito Mendoza was assisted by Assistant Solicitor General Reynato S. Puno and Solicitor Zoilo A. Andin.

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

[3] Article XII, C, Section 10 of the Constitution reads in full: "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."

[4] Comment of the Solicitor General, paragraph 1.

[5] Ibid, paragraph 6.

[6] Ibid, paragraphs 8 and 9.

[7] Ibid, paragraph 10.

[8] Petitioners are registered voters of Angono, Rizal

[9] G.R. No. 52463, September 4, 1980.

[10] G.R. No. 52527, September 4, 1980.

[11] G.R. No. 54039, November 28, 1980.

[12] G.R. No. 52830, November 28, 1980.

[13] Arcenas v. Commission on Elections, 3. Reyes v. Commission on Elections, G.R. No. 52699, was decided on May 15, 1980.

CONCURRING OPINION

TEEHANKEE, J.:

I concur. The decision at bar penned by the Chief Justice adheres to his concurring opinion in Singco vs. Comelec (G.R. No. 52830, November 28, 1980) to the effect that "after the holding of the January 30, 1980 election, and a proclamation thereafter made, a petition to disqualify a candidate based on a change of political party affiliation filed with this Court after January 30, 1980, arising from a pre-proclamation controversy, should be dismissed without prejudice to such ground being passed upon in a proper election protest or quo warranto proceeding" (at page 2, main opinion).

I submit that the better rule is that stated by the Chief Justice himself for the Court in his ponencia in *Arcenas vs. Comelec* (G.R. No. 54039, November 28, 1980), to wit: "that it is of 'no materiality' to distinguish whether the petition for disqualification against the winning candidate was filed before the election or after the proclamation of the winner since 'the ratio decidendi is broad enough to cover the present situation for it would be time-consuming and in the end self-defeating if at this stage the pre-proclamation controversy is not laid to rest. The better view, as noted in *Venezuela* (G.R. No. 53532, July 25, 1980), is that resort be had to the remedy of an election protest or a quo warranto, whichever is proper."

This is in line with my separate concurrence in *Reyes vs. Comelec* (G.R. No. 52699, May 15, 1980), reiterating my submittal that all such pre-proclamation 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 forum (the Comelec for provincial and city officials and the proper Court of First Instance for municipal officials). This coincides with the President's own view as he reported in the February 27, 1980 newspapers "to have ordered the lawyers of the KBL [Kilusang Bagong Lipunan] to withdraw all disqualification 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).

All such pre-proclamation cases on grounds of alleged turncoatism of the winning candidate should now be laid to rest and the winning candidate should be allowed at last to assume his office in accordance with the electorate's verdict and set aright matters where even at this late stage, or 11 months after the holding of the elections, the winning candidate has been stopped from assuming office whereas the rejected loser was the one wrongfully proclaimed or allowed to continue in office on a holdover capacity as in *Singco, supra*, *Abrasaldo vs. Comelec* (G.R. No. 53730, November 13, 1980) and other cases.

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