

GUILLERMO S. ARCENAS, PETITIONER, VS. THE COMMISSION ON ELECTIONS AND JESUS R. VITUG, JR., RESPONDENTS.*G.R. No. 54039. November 28, 1980*

Ponente: FERNANDO, C.J.

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The decisive issue in this certiorari proceeding is whether or not, as alleged by petitioner Guillermo Arcenas, the defeated mayoralty candidate for Hermosa, Bataan in the local election held on January 30, 1980, respondent Commission on Elections committed a grave abuse of discretion in motu proprio dismissing his action for disqualification of private respondent Jesus Vitug, Jr., the victor in such election. He was thereafter subsequently proclaimed and is now holding such office. For reason to be set forth, the answer must be in the negative. There was no abuse of discretion, much less a grave one.

Petitioner Arcenas was the official candidate of the Kilusang Bagon Lipunan, with respondent Vitug, Jr. running under the Nacionalista Party banner. On January 22, 1980, prior to the election, the latter was sought to be disqualified by petitioner before respondent Commission^[1] for violating the constitutional prohibition against a "candidate for public office [changing] his political party affiliation within six months immediately preceding or following an election."^[2] It was alleged that he was the Chairman of the Kilusang Bagong Lipunan chapter in Hermosa, was thereafter removed by the President, and then became the Nacionalista Party candidate. As noted earlier, he won in the election and was duly proclaimed by the Municipal Board of Canvassers of Hermosa on January 31, 1980. He took his oath and assumed office forthwith. While the disqualification case was filed eight days before the election, it could not be heard during that period. Petitioner then on February 3, 1980 filed with respondent Commission a motion to set it for hearing. There were subsequent pleadings filed by him all in support of his plea for disqualification. Then on February 22, 1980 came this resolution from respondent Commission: "In the matter of the petition of Guillermo S. Arcenas, seeking the disqualification of [Jesus R. Vitug,] for Mayor, Hermosa, Bataan, on the ground that the respondent was the Chairman of the KBL Chapter in said municipality, was removed from office by the President, and then became a candidate of the NP; and the Urgent Omnibus Motion and/or Quo Warranto, filed by the same petitioner, submitting additional evidence to show the party affiliation of the respondent: The Commission, on motion duly seconded, [resolved] to deny the petition, without prejudice to pursuing any other available legal remedy."^[3] A motion for reconsideration having been denied, petitioner filed this proceeding.

As set forth at the outset, this petition must be dismissed.

- The assailed resolution finds support in three recent decisions of this Court, *Venezuela v. Comelec*,^[4] *Villegas v. Comelec*,^[5] and *Potencion v. Comelec*,^[6] all impressed with relevance. It is now the prevailing doctrine that after an election duly held and a proclamation thereafter made, a pre-proclamation controversy should no longer be viable. As was pointed out in the *Venezuela* opinion: "it would save the time and energy of the litigants as well as respondent Commission, and eventually this Court in review 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." [7]

- It is true that the facts of the Venezuela case could be distinguished as that petition for disqualification appeared to have been filed after the private respondent had already been proclaimed. In this case, the petition for disqualification, as noted at the outset, was filed eight days before the election. Such a distinction possesses no materiality. 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, is that resort be had to the remedy of an election protest or a quo warranto, which ever is proper.

- Nor does a decision of this character detract from the binding force of the principle announced in Reyes v. Comelec, [8] 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.

WHEREFORE, this petition for review is dismissed for lack of merit. The resolution of the Commission on Elections dated February 22, 1980 stands.

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

Teehankee, J., files a separate concurrence.

Aquino, J., took no part.

[1] PDC No. 517, Annex A, Petition.

[2] Article XII, C, Section 10 of the Constitution.

[3] Resolution dated February 22, 1980.

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

[5] G. R. No. 52563, Sept. 4, 1980.

[6] G. R. No. 52527, Sept. 4, 1980.

[7] Venezuela v. Comelec, G. R. No. 53532, July 25, 1980, 3.

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

SEPARATE CONCURRING OPINION

TEEHANKEE, J.:

The Court, through the Chief Justice has now made clear that the prevailing doctrine is that "after an election duly held and a proclamation [of the winning candidate who received the highest number of votes] thereafter made, a pre-proclamation controversy should no longer be viable," that while "the issue of disqualification [of the winner for alleged turncoatism] has not been rendered moot and academic, ... the remedy to be pursued is no longer the preproclamation controversy" but the remedy of "an election protest or quo warranto petition in the proper court or agency" (in the Comelec for elective provincial and city officials and in the proper court of first instance for

elective municipal officials[1]) - which must be availed of within the ten-day grace period given in general Comelec Resolution No. 9434 of March 1, 1980.

The Court has likewise made it clear 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,[2] is that resort be had to the remedy of an election protest or a quo warranto, whichever is proper."

I fully concur. Our ruling now sets aright the Comelec's erratic and contradictory rulings and application of its own Resolution No. 9434 which directed the canvassing boards "to temporarily proclaim the winning candidates notwithstanding the pendency of pre-proclamation cases" (in consonance with the early precedent to this effect given by the Court in the case of Pimentel[3]) - but which it followed in some cases and disregarded in other cases: -

To cite two ready instances: in the present case, the Comelec correctly dismissed, "without prejudice to pursuing any other available legal remedy", the pre-proclamation petition for disqualification filed by the loser Arcenas against the proclaimed winner respondent Vitug (who allegedly became the Nacionalista candidate when he was removed by the President as chairman of the KBL chapter in Hermosa). Yet in another case, *Singco vs. Comelec* promulgated on this same date, the Comelec incomprehensibly took the opposite track and plucked out the case of the winner Singco on the eve of his scheduled assumption of office to issue a Resolution dated February 26, 1980 arbitrarily and without any hearing ever having been held, summarily disqualifying him as against its own chairman's dissent who voted "for allowing the winner to be proclaimed, without prejudice to the disqualification case being heard and decided, following Supreme Court ruling in the Pimentel case" - thus preventing the winner up to now from assuming and discharging the office of mayor to which he had been duly elected, which resolution the Court has now nullified and set aside.

Our ruling now expressly signifies that all such pending pre-election cases seeking to disqualify the winner and the electorate's choice on the ground of alleged turncoatism should now be ordered dismissed after the elections held on January 30, 1980, and the winner maintained in office or allowed to assume the office in case he had been prevented by adverse action of the Comelec, subject to the remedy of filing of a quo warranto proceeding or election protest against the winner in the proper forum. Thereby, the people's will and undeniable right to have officials of their unfettered choice will thus be respected pending the final determination and outcome of such remedy as may be filed by the loser.

With our definitive ruling now, this Court's dockets would hopefully be cleared of all such pending pre-proclamation or post-election cases seeking to disqualify the winners or to prevent or annul their proclamation (even at this late stage, 9 months after the holding of the elections!), in line with the President's own view as reported in the February 27, 1980 newspapers whereby he "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 disqualification case before us that has been so withdrawn).

A full-dress hearing in the appropriate forum on the ground of alleged turncoatism in accordance with due process would provide the parties full opportunity to present all relevant evidence (with confrontation and examination of the witnesses) on the vital factual and legal issues as specified in my separate opinion in *Reyes vs. Comelec*. [4]

It need only be pointed out, furthermore, that our ruling now corrects the anomalous situation where the Comelec

without any known norm or criterion apparently discriminatorily picked out some cases before and after the election from the hundreds of such pending disqualification cases to disqualify the winner and proclaim the loser, notwithstanding the established rule since the 1912 case of *Topacio vs. Paredes*[5] that the repudiated loser who succeeds in disqualifying the winner of the election is not entitled to be proclaimed and assume office in lieu of the winner, since he has not received the plurality of the votes cast in the election. Certainly, such selective process which "frustrated the sovereign will of the electorate for the undue benefit of undeserving third parties" (to quote from the Court's decision in *Singco*, supra) constitutes a grave denial of equal protection of the laws and of substantive due process and fair play. It is now nearing the end of the year 1980 (with the election having been held on January 30, 1980) and all such pre-proclamation or pre-election cases seeking to disqualify the winner on the ground of alleged turncoatism should now be ordered dismissed subject to the loser's availing of the appropriate remedy of an election protest or quo warranto action, as herein indicated. The 1978 Election Code after all provides for the expeditious determination of such cases, 90 days and 30 days from date of submission for decision, for the Comelec and the Courts of First Instance, respectively.[6]

As stressed by the Chief Justice in *Villegas vs. Comelec*,[7] "it would be a time consuming effort if the pre-proclamation controversy at this stage would have to be sent back to the Commission on Elections for a full-dress hearing. That is essential in the task of adjudication, being one of the cardinal requirements of procedural due process. The election protest, however, would serve just as well, if not better."

[1] Sections 188 and 190, P.D. No. 1296 (1978 Election Code).

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

[3] G.R. No. 52428, prom. Feb. 21, 1980.

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

[5] 23 Phil. 238.

[6] Sections 193 and 197, P.D. No. 1296.

[7] G.R. No. 52463, prom. Sept. 4, 1980.

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