

FELINO MAQUINAY, PETITIONER, VS. HON. ILDEFONSO M. BLEZA, JUDGE, COURT OF FIRST INSTANCE OF CAVITE, BRANCH V AND NILO DE GUZMAN, RESPONDENTS.

G.R. No. 54230, October 30, 1980

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Petition for certiorari and prohibition with preliminary injunction or restraining order, to reverse the resolution[1] of respondent Judge denying petitioner's motion to dismiss[2] and to enjoin the former from enforcing his resolution[3] of 17 June 1980 and from further hearing, Electoral Protest Case No. B-80-1 entitled "Nilo M. de Guzman vs. Felino Maquinay."

In the resolution of 15 July 1980, We issued a temporary restraining order as prayed for, effective as of that date and continuing until otherwise ordered.

Record shows that petitioner was the official Kilusan ng Bagong Lipunan (KBL) candidate for mayor for the Municipality of Carmona, Cavite, during the local elections of 30 January 1980; that he had duly filed his certificate of candidacy for the said position during the said local elections and was opposed by respondent Nilo de Guzman of the Nacionalista Party (NP); and that after the said elections, he was duly proclaimed elected Mayor of said Municipality.

On 10 March 1980, respondent De Guzman filed an election protest[4] docketed as Electoral Protest Case No. B-80-1 before the Court of First Instance of Cavite, Branch V, respondent judge presiding, praying, inter alia, that the canvassing and proclamation of the Office of the Mayor, made by the Municipal Board of Canvassers, be declared null and void.

On 17 March 1980, petitioner filed his Answer[5] with Special and Affirmative Defenses to said protest and, on 15 April 1980, a Motion for Preliminary Hearing on Special and Affirmative Defenses with Motion to Dismiss[6] alleging, in substance, that the Court of First Instance of Cavite has no jurisdiction to hear and decide the protest for failure of respondent De Guzman, as protestant, to allege sufficient facts upon which the jurisdiction of the Court is based, as there was no sufficient allegation that he has filed his certificate of candidacy; that the protest is principally anchored on failure of election, a matter which is within the exclusive jurisdiction of the Commission on Elections; and that there was no sufficient allegation of fraud and irregularities committed, which are prejudicial or will change the result of the election.

On 17 June 1980, respondent Judge issued a Resolution[7] denying, for lack of merit, the Motion to Dismiss and enjoining the counsel of both parties "to confer with the Acting Clerk of Court so that they could agree on the dates of the revision of the ballots in the various precincts, on June 30, 1980", upon the following observation:[8]

"The Court has examined carefully the protest proper and found that it alleges sufficient facts enough to confer jurisdiction upon it, the protestant having alleged that on the date in question, he was a duly registered elector,

and has all the qualifications as such elector and also as a candidate for Mayor in the Municipality of Carmona, Cavite. Protestant's failure to state in his protest that he filed his certificate of candidacy is deemed to be included in that portion of the pleading stating 'and has all the qualifications as such elector and also as a candidate for Mayor in the Municipality of Carmona, Cavite,' in addition to the allegation that the Commission on Election counted and canvassed the votes where protestant appears to have garnered 1729 votes, while protestee appeared to have obtained 7,458 votes which resulted in said protestee's proclamation by the Municipal Board of Canvassers on March 1, 1980, together with the other candidates for Vice Mayor and members of the Sangguniang Bayan.

"There is also an allegation of fake voters and electors with fake identification cards who were allowed to vote and voters not listed in the list of voters, numbering not less than 1,000 voters, were likewise allowed to vote in the various precincts, together with flying voters. Again, it is also alleged that substitute voting took place wherein dead people listed in the voters list were voted for by others, numbering 500 in all.

"There is also allegation of terrorism which forced electors to vote KBL and prevented NP sympathizers from exercising their right of suffrage, with ballots having been prepared by one or more hands and there was also erroneous appreciation of ballots.

"The allegation of failure of election forms part only of the protest, but not principally anchored on it, as contained in the protestee's motion for preliminary hearing, and from the above recital of facts gathered from the protest itself, there can be no dispute that more than sufficient allegation of fraud and irregularities were committed allegedly in the counting of the votes, which warrants indeed that the protest be given due course."

On 27 June 1980, petitioner filed an Urgent Motion to Reset Date of Conference[9] with manifestation of his intention to file a motion for reconsideration and/or petition for certiorari before this Court, which Urgent Motion was granted by respondent Judge in his Order[10] of 30 June 1980, and the conference was accordingly reset to 15 July 1980, at 8:30 a.m., with warning that it is intransferable in character.

On 12 July 1980, the present petition was filed, basically reiterating petitioner's allegations and arguments contained in his Motion to Dismiss, and now asserting that in denying his Motion to Dismiss, the respondent Judge has acted without or in excess of jurisdiction in proceeding with the hearing of Electoral Protest Case No. B-80-1.

Citing Section 2, Rule II of Resolution No. 1451, governing election contests, promulgated by the Commission on Elections on or about 26 February 1980, which requires that:

"A sworn petition contesting the election of any municipal or municipal district officer-elect shall be filed with the proper Court of First Instance, or mailed at the post office as registered matter addressed to said Court, together with twelve (12) legible copies thereof, by any candidate for the same office who had duly filed a certificate of candidacy and who was voted upon in the election. Each contest shall refer exclusively to one office but contests for offices of the sangguniang bayan may be consolidated in one case." (Italics supplied)

petitioner insists that the allegations in the election protest filed by respondent De Guzman in the court a quo are not sufficient compliance with the requirements of the law considering that "there is no allegation in said protest that the protestant has duly filed his certificate of candidacy", and therefore, the jurisdictional facts are not established, for which reason, the court a quo acquires no jurisdiction over the said protest.

We disagree.

While respondent De Guzman, as protestant, has not expressly used the ceremonial wordings prescribed, such jurisdictional allegation is not an indispensable condition to the sufficiency of an election protest nor its use verbatim therein a condition sine qua non to the conferring of jurisdiction upon the court to take cognizance of the

protest. To Our mind, the protest filed by respondent De Guzman has substantially complied with the requisite of jurisdiction, specifically, the allegations that during said local elections, he is the official NP candidate and that he received the total number of 1,729 votes as canvassed by the Municipal Board of Canvassers, allegations which would infer that he had duly filed his certificate of candidacy, otherwise, said Board of Canvassers would not have credited in his favor said 1,729 votes. In fact, the petitioner himself had admitted in this petition, "(t)hat during the said elections, (he) was opposed by respondent De Guzman of the Nacionalista Party." [11] Under these circumstances, a requirement that protestant should have expressly alleged in his protest that he has duly filed his certificate of candidacy would be making a fetish of a technicality. A single fact may be alleged in different ways with the same effect. Precision in the use of terms in an election protest is not indispensable. Substantial compliance is sufficient. Statutes providing for election contests are to be liberally construed as they are intended to promote, not defeat, justice. Technicalities are not favored. [12] This should be more so upon consideration that in an election protest, public interests enter, the need of ascertaining the free and true will of the voters.

Petitioner likewise argues that the protest filed in the court a quo, being principally based on alleged "failure of election", respondent Judge has no jurisdiction over the case, the matter being cognizable only by the Commission on Elections. This stand is not accurate because the allegation of "failure of election" only forms part of the protest and is not the principal anchor of the protest, as correctly observed by respondent Judge in his questioned resolution. Besides, if the protestant can duly prove his allegations in his protest that frauds and irregularities had characterized the election, an opportunity that is afforded him more than the proceedings held in the COMELEC the same will not in reality constitute a "failure of election". Accordingly, petitioner's contention that since the issue of the alleged "failure of election" was properly ventilated before the Commission on Elections and the Commission decided to allow his proclamation as the duly elected Mayor of Carmona, Cavite, that issue can no longer be raised anew in respondent De Guzman's protest on the ground of *res judicata*, cannot hold water. It is, moreover, a matter shown in the records, that what was filed with the Commission on Elections was a petition for the holding of a special election, which resulted to the issuance of the following Order: [13]

"9406 (P.P. Nos. 31 & 66). It appearing that the petitioners in both cases have prayed for the holding of a special election in the Municipality of Carmona, Province of Cavite on the ground of alleged terrorism, violence and election offenses which resulted to a failure of election on January 30, 1980; that petitioner, however, in PP Case No. 66 has withdrawn his petition for the reason, among others, that the canvassing of the votes in Carmona was in fact terminated on February 13, 1980 and that petitioner therein FELINO MAQUINAY, mayoralty candidate, has won by about '6000 votes' over his opponent NILO DE GUZMAN, one of the petitioners in PP Case No. 31; that based upon the pleadings and from the evidence presented at the hearing held jointly with PP Case No. 94, the latter concerning the election of provincial officials of Cavite which case, however, was decided in favor of the latter officials who have in fact been proclaimed already, there is no strong and sufficient evidence to show that the alleged isolated acts of terrorism and violence in a few voting centers in Carmona has affected adversely the generally free, peaceful and honest election throughout said town and the entire province of Cavite on January 30, 1980; and that the Commission having already dismissed a similar petition docketed as PP Case No. 58 also asking for the holding of a special election in Carmona on the ground that the allegation of terrorism therein is a proper ground for protest as in the cases at bar; the Commission RESOLVED (1) to DENY the petition in PP Case No. 31 and to consider as WITHDRAWN PP Case No. 66, without prejudice to the filing of an election protest and complaints for violation of the 1978 Election Code; and (2) to ORDER the Municipal Board of Canvassers to reconvene and to proclaim the winning candidates for the municipal local officials of Carmona, Cavite immediately." (Italics supplied)

It is thus clear that the COMELEC itself did not consider its Resolution a bar to the filing of an election protest. Respondent De Guzman, precisely prodded and guided by the above-quoted Order rendered by the Commission

on Elections the issuance of said Order being "without prejudice to the filing of an election protest and complaints for violation of the 1978 Election Code", filed the protest sought in this petition to be dismissed.

FOR THE REASONS GIVEN, the Court resolves to dismiss the instant petition for certiorari and prohibition with preliminary injunction or restraining order. The Temporary Restraining Order previously issued is hereby lifted, and respondent judge ordered to proceed immediately with the hearing of Electoral Protest Case No. B-80-1. No pronouncement as to costs.

SO ORDERED.

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

Fernando, C.J., on official leave.

[1] Annex "F" to Petition, pp. 53-55, Rollo.

[2] Annex "C" to Petition, pp. 38-43, Ibid.

[3] Annex "F" to Petition, supra.

[4] Annex "A" to Petition, pp. 12-18, Rollo.

[5] Annex "B", to Petition, pp. 20-36, Rollo.

[6] Annex "C", to Petition, pp. 38-43, Rollo.

[7] Annex "F", to Petition, supra.

[8] p. 2, Ibid.

[9] Annex "G" to Petition, pp. 56-57, Rollo.

[10] Annex "H" to Petition, p. 58, Rollo.

[11] paragraph 3 of Petition, p. 3, Rollo.

[12] De Castro vs. Ginete, 27 SCRA 623; Jalandoni vs. Sarcon, 94 Phil. 266; Surtida vs. Lesaca, 66 Phil. 168; Anis vs. Contreras, 55 Phil. 923; Galang vs. Miranda & De Leon, 35 Phil. 269;

[13] Annex "I" to Petition, p. 59, Rollo.

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