

**ERNESTO G. PEREZ, PEDRO C. GONZALES, ZACARIAS AGNO,
REYNALDO AQUINO, AMBROCIO BANAWA, JUAN BATHAN,
ANASTACIO MANALO, ANTONIO MARALIT, SOTERO PROMENTILLA,
AND WINEFRED VILLANO, P...**

G.R. No. 55873. February 25, 1985

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

It is the procedural due process guarantee that reliance is placed by petitioners in this certiorari and prohibition proceeding. The necessity of an inquiry into the merit of such an approach is obviated by the fact that there is actually an election protest between the same parties.

The petitioners are Ernesto G. Perez who was the official candidate of the Nacionalista Party for Mayor of Sta. Teresita, Batangas; Pedro C. Gonzales for Vice-Mayor; and Zacarias Agno, Reynaldo Aquino, Ambrosio Banawa, Juan Bathan, Anastacio Menalo, Antonio Maralit, Sotero Promentilla and Winefred Villano for members of the Sangguniang Bayan.[1] Private respondents are the official candidates of the Kilusang Bagong Lipunan (KBL) of the same place, namely, Norberto Segunial for Mayor; Pelagio M. Cara for Vice-Mayor; and Rodelito Anorico, Juanito Atienza, Francisco Cabungcal, Vicente Kasilao, Elpidio Mendoza, Pedro Rodriguez, Conrado Onal and Martin Salazar for Members of the Sangguniang Bayan.[2]

The resolution of November 21, 1980 reads in full: "10069. (PP Case No. 153 - Ernesto G. Perez, et al., versus Municipal Board of Canvassers, et al.) It appearing from the motion for reconsideration, dated March 4, 1980 and the supplement thereto dated March 20, 1980 filed by the respondents, and the opposition to said motion for reconsideration, dated March 15, 1980, as well as the opposition to the supplemental motion for reconsideration, dated March 22, 1980 and the memorandum for the respondents, dated April 15, 1980, that the matters alleged and charged by the petitioners to the effect that the registration of voters, the balloting and all mechanics relative thereto in the voting centers in Sta. Teresita, Batangas, mentioned therein, during the elections of January 30, 1980, were allegedly attended by fraud and other serious election irregularities, which would further necessitate, among other things, the opening of the ballot boxes, appreciation of the ballots contained therein and extensive examination into the circumstances surrounding the alleged frauds and irregularities, which are vigorously disputed by the respondents; that considering that such charges are the proper subject of an election protest in which all the issues raised by the parties can be fully ventilated before the court where the parties can have all the opportunity to prove their respective charges and defenses in a full-blown hearing of the case on the merits; and that, furthermore, the instant case does not fall squarely within the purview of Sections 172, 173 and 174 of the 1978 Election Code invoked by the petitioners, the Commission hereby [Resolved] to grant the motion for reconsideration dated March 4, 1980 and to dismiss the instant case, without prejudice to the filing of the corresponding election protest by the petitioners before the proper court within ten (10) days from notice hereof. The proclamation dated March 4, 1980 by the municipal board of canvassers of Sta. Teresita, Batangas is hereby reinstated thereby lifting the order setting the same aside."[3]

The resolution of December 10, 1980 reads as follows: "10070. (PP Case No. 153 - Ernesto G. Perez, et al. versus Municipal Board of Canvassers, et al., Sta. Teresita, Batangas). Considering that the date March 4, 1980 appearing in the first line of the last paragraph of Item No. 10069 of the Minutes of the Special Session of the Commission held on November 21, 1980 is a typographical/clerical error which should read February 7, 1980, the Commission, on motion duly made and seconded, hereby orders the same to be corrected by changing it to February 7, 1980. Let the Law Department furnish the parties or their respective counsels copy of this order immediately. [So Ordered]."[4]

The proclamation by the municipal board of canvassers on February 7, 1980 declared private respondents the winners, while that of March 4, 1980 declared petitioners as the victors. From a cursory reading, however, of respondent Commission on Elections' resolution of November 21, 1980, it is quite readily seen that the dispositive portion ought to refer to the earlier proclamation of February 7, 1980 in favor of private respondents. There was indeed such typographical or clerical error.

The existence of such error becomes even more undeniable from the very title of the November 21 resolution. Thus: "10069. (PP Case No. 153 - Ernesto G. Perez, et al. versus Municipal Board of Canvassers, et al.)." Petitioners there, Ernesto G. Perez, is again the petitioner here, along with the other petitioners. The respondents are the private respondents in this petition. With the corrected resolution of December 10, 1980, there was an affirmation of their right to continue in office, which all along they had been occupying after their proclamation, except during those few days between December 8, 1980, when petitioners received the erroneous resolution of November 21, 1980 and the date, unspecified in the pleadings, when they received the corrected resolution.

In the petition for review, no mention was made thereafter as to what action was taken by petitioners subsequent to the resolution of December 10, 1980. In the Comment, however, of private respondents it was pointed out that petitioners instead of filing a motion for reconsideration on the ruling of the Commission on Elections, filed an election protest with the Court of First Instance of Batangas, Lemery branch, setting forth the very grounds in this petition.[5] Moreover, at the time of the filing of such Comment, summons had already been issued, answers filed and ballot boxes of the protested voting centers ordered brought to the then Court of First Instance.[6] Apparently, at the time this petition was set for deliberation, such protest was still pending, as no further pleading on such protest had been filed with this Court.

As mentioned at the outset, it is the filing of such election protest that obviates the need for passing upon the question of the alleged denial of procedural due process.

1. In the Comment of the Solicitor General, reference was made to *Arcenas v. Commission on Elections*,[7] specifically this excerpt: "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.'"[8] The *Arcenas* decision was promulgated on November 28, 1980. An earlier case, *Villegas v. Commission on Elections*,[9] is apropos. For in that case as in this petition, the grounds alleged are more appropriate for an election protest. An election contest is therefore the appropriate remedy. A pre-proclamation controversy is no longer viable. Considering the time that has elapsed, the possibility that after the pre-proclamation controversy an election protest may still be filed, and the imminence of the coming elections for local government officials, it is more in keeping with the letter and spirit of the constitutional provision on suffrage, the intent of which is to ascertain the true expression of the people's will - a voter being a particle of a popular sovereignty[10] that this petition be dismissed.

2. Moreover, there is reinforcement to the above conclusion. The case was filed on January 7, 1981. Two days,

earlier, on January 5, 1981, *Aguinaldo v. Commission on Elections*[11] was decided. The governing principle, with reference as to when this Court will assume jurisdiction after proclamation duly made with either a protest or a quo warranto as the remedy for the losing party was set forth thus: "Since *Venezuela v. Commission on Elections*, 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, 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." [12] It does not argue against this approach that the clarificatory statement in *Aguinaldo* was announced two days before the filing of this case, for as shown in the above excerpt, the genesis of the doctrine may be found in *Venezuela v. Commission on Elections*, a 1980 decision.[13] The *Aguinaldo* doctrine has since then been the prevailing doctrine.[14]

WHEREFORE, there being a pending election protest, there is no need to pass on the legal issues raised, being impressed as it is with a moot and academic aspect. The petition is dismissed. No costs.

Aquino, Concepcion, Jr., Abad Santos, Melencio-Herrera, Plana, Escolin, Relova, Gutierrez, Jr., De la Fuente, Cuevas, and Alampay, JJ., concur.

Teehankee, J., see brief concurrence.

Makasiar, J., in the result.

[1] Petition, par. 5.

[2] *Ibid*.

[3] Annex A to Petition.

[4] Annex B to Petition.

[5] Comment of Private Respondents, par. 20.

[6] *Ibid*, par. 21.

[7] G.R. No. 54039, November 28, 1980, 101 SCRA 437.

[8] *Ibid*, 440.

[9] G.R. No. 52463, September 4, 1980, 99 SCRA 582.

[10] Cf. *Moya v. Del Fierro*, 69 Phil. 199 (1939).

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

[12] *Ibid*, 3.

[13] G.R. No. 53532, July 25, 1980, 98 SCRA 790.

[14] Cf. *Laguda v. Commission on Elections*, G.R. No. 53747, February 20, 1981, 102 SCRA 857; *Agcaoili, Jr. v. Santos*, G.R. No. 52791, February 26, 1981, 103 SCRA 350; *Mitmug v. Commission on Elections*, G.R. No. 54082, March 24, 1981, 103 SCRA 455; *Faderanga v. Commission on Elections*, G.R. No. 55938, June 26, 1981, 105 SCRA 123; *Disini v. Commission on Elections*, G.R. No. 52502, Dec. 30, 1982, 119 SCRA 511; *Resurreccion v. Commission on Elections*, G.R. No. 57219-20, January 4, 1984, 127 SCRA 1; *De Leon v.*

Commission on Elections, G.R. No. 56968, April 30, 1984, 129 SCRA 117.

CONCURRING OPINION

TEEHANKEE, J.:

The Court's decision reaffirms as "the prevailing doctrine" its host of rulings in the *Venezuela*, *Arcenas*, *Villegas* and *Aguinaldo* cases cited therein that after an election duly held and a proclamation duly made thereafter, a pre-proclamation controversy should no longer be viable and "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 ... " (at page 4), save only where the controversy was acted upon by the Comelec and was elevated to this Court before election day on January 30, 1980, which cases would be resolved by this Court.

It marks, I trust, an abandonment of the *Olfato* case involving the mayoralty of Tanauan, Batangas, 103 SCRA 741 (1981), wherein this Court, despite the above-cited prevailing doctrine, sustained the Comelec's volte face of continuing to entertain the loser's petition for annulment of Mayor Olfato's proclamation notwithstanding that it had previously dis-missed the petition since the grounds alleged therefor were proper grounds for election protest and the loser had in fact filed such election protest. Mayor Olfato has of course assumed and discharged his official functions as mayor all this while. After four years, the Comelec has yet to resolve the loser's "summary" petition to annul the mayor's proclamation, whereas the regular election protest originally decreed by the Comelec would have taken less time and resolved the dispute with finality.

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