

**JORY F. FADERANGA, NORBERTA RIOS, ANTOLIN FRUELDA,
FILEMON MARTINQUILLA, AVELINO FABONAN, ERNESTO
FERRANCULLO, ELMER FABAYOS, PEDRO FADEROGAO, REYNALDO
FETALVERO, AND RADIGONES ...**

G.R. No. 55938. June 26, 1981

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

The resolution assailed in this certiorari and mandamus proceeding was issued on December 29, 1980. The petition gains force and persuasiveness considering the principle consistently adhered to by this Court from *Venezuela v. Commission on Elections*,^[1] decided as far back as July 25, 1980. We do so again.

The case arose from a petition filed on January 18, 1980 by private respondents with respondent Commission on Elections seeking the disqualification of petitioners from being candidates respectively for mayor, vice mayor and members of the Sangguniang Bayan of Banton, Romblon. It was alleged that they changed their party affiliation from KBL to NP within six (6) months before the local election. On the date of the election, such petition was still undecided. Petitioners won and on January 31, 1980 were proclaimed duly elected respectively as mayor, vice mayor and members of the Sangguniang Bayan of Banton, Romblon. Petitioners were informed that respondent Commission on Elections sent a telegram to the Registrar of Banton, Romblon to suspend the proclamation of the petitioners. It was, however, received only late in the same day of January 31, 1980 after the proclamation. It was not until February 28, 1980 that such petition for disqualification was resolved. It was denied for lack of sufficient evidence. Accordingly, on March 3, 1980, the Registrar of Banton, Romblon, advised petitioners that all winning candidates would be proclaimed anew on the afternoon of that day. Thus, for the second time, on March 3, 1980, petitioners were proclaimed. Only then did petitioners take their oaths of office. There was a motion for reconsideration by private respondents with respondent Commission on March 19, 1980. An opposition was filed by petitioners on April 17, 1980. It was their contention that no new issues, grounds or facts were raised therein. For them, the proclamation having attained the stage of finality, to reopen the proceedings would be tantamount to annulling it contrary to the 1978 Election Code. The motion for reconsideration was heard and submitted for resolution on September 29, 1980. Then, three months to the day, on December 29, 1980, as noted at the outset, respondent Commission reversed itself. Hence this certiorari and mandamus petition filed on January 19, 1981. A temporary restraining order was issued on January 20, 1981.

In the aforecited case of *Venezuela v. Commission on Elections*, as well as in the succeeding cases of *Villegas v. Commission on Elections*,^[2] and *Potencion v. Commission on Elections*,^[3] the two latter cases decided as early as September 4, 1980, the attempt to prolong a pre-proclamation controversy even after the duly elected officials had been proclaimed and had assumed office did not prosper. This Court applied the doctrine, earlier noted, that such a stage having been reached, the proper remedy would be an election contest or a quo warranto petition as the case may be. In the language of *Aguinaldo v. Commission on Elections*:^[4] "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."^[5]

As a matter of fact, in *Arcenas v. Commission on Elections*,^[6] when petitioner, the defeated mayoralty candidate for Hermosa, Bataan instituted a certiorari proceeding alleging a grave abuse of discretion as respondent Commission *motu proprio* dismissed an action for disqualification of private respondent, the victor in such election, this Court found nothing objectionable in what was done. The Commission was sustained. That decision of this Court, rendered a month before the assailed resolution, ought to have furnished guidance. Respondent Commission should have denied the motion considering that as far back as March 3, 1980, petitioners were proclaimed and thereafter held and continue to hold the offices in question. That is not merely to abide by the authoritative pronouncements of this Court. It would be likewise in consonance with what the realities of the situation dictate. Even disregarding the first pronouncement, the Commission, apparently after considerable thought, had affirmed that as the victors in the election, petitioners had earned the right to be proclaimed. To upset the existing conditions in Banton, Romblon under the circumstances would not be conducive to stability. On the other hand, to follow the authoritative pronouncement of this Court and thus put an end to the pre-proclamation controversy, reserving the right to private respondents to pursue the matter in the appropriate election protest or quo warranto petition as the case may be, would be more in keeping with the orderly ways of the law. This is not to impugn the good faith of respondent Commission. It is merely to stress that in a choice of alternatives, what should guide its final disposition of a pre-proclamation controversy after the lapse of a considerable period is to accord respect to a proclamation made after due deliberation but, as noted above, without prejudice to a protest or quo warranto action to be filed, if the losing party chooses to pursue such remedy.

WHEREFORE, the petition is granted. The order of December 29, 1980 is nullified and set aside, amounting as it does to a grave abuse of discretion. The right of petitioners as duly elected officials in the various positions in question to continue as such is affirmed, subject, however, to private respondents, if so minded, instituting an election protest or a quo warranto proceeding, as the case may be. For that purpose, they are given a period of fifteen (15) days after receipt of this decision. The restraining order of January 20, 1981 is hereby made permanent. This decision is immediately executory. No costs.

Teehankee, Barredo, Fernandez, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Makasiar, J., in the result.

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

Aquino, J., no part.

[1] G.R. No. 53532.

[2] G.R. No. 52463.

[3] G.R. No. 52527.

[4] G.R. No. 53953, January 5, 1981.

[5] *Ibid*, 2. Cf. The two latter cases of *Laguda v. Commission on Elections*, G.R. No. 53747, February 20, 1981

and Agcaoili v. Commission on Elections, G.R. No. 52791, February 26, 1981 are equally relevant.

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

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