

**CECIL DIGMAN, PETITIONER, VS. COMMISSION ON ELECTIONS
(FIRST DIVISION) AND MARCELO U. AGUINDADAO, RESPONDENTS.***G.R. No. 55988. February 18, 1983*

Ponente: AQUINO, J.

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This is a case on turncoatism or political opportunism. Cecil Digman was the Nacionalista candidate for vice-mayor of La Trinidad, Benguet in the election on January 30, 1980. On January 16 1980, his opponent, Marcelo U. Aguindadao, the official candidate of the Kilusang Bagong Lipunan, filed with the Commission on Elections a petition to disqualify Digman on the ground of turncoatism (pp. 31-33, Rollo).

At the hearing, Aguindadao presented evidence proving that Digman was disqualified to run for vice-mayor because on December 26, 1979 he had affiliated himself with the KBL (p. 34, Rollo) and attended the KBL caucus on that date; that Digman was the treasurer of the municipal KBL committee; that he wanted to run as KBL candidate for vice-mayor but lost to Cipriano Abalos and that after losing in the KBL convention, Digman had himself proclaimed as the official NP candidate for vice-mayor (See Exh. A to E).

Digman did not present any evidence. The Comelec in a telegram sent on January 31, 1980 to the chairman of the municipal board of canvassers directed that board to withhold the proclamation of Digman as the winning candidate for vice-mayor but the board disregarded that directive and on February 5, 1980 proclaimed Digman as the elected vice-mayor. He obtained 6,820 votes while Aguindadao received 3,811 votes. Digman took his oath of office.

The Comelec in its resolution of August 27, 1980 disqualified Digman for the position of vice-mayor on the ground of turncoatism and declared the votes cast in his favor as stray votes (p. 53, Rollo).

In its order of December 16, 1980, the Comelec denied Digman's motion for reconsideration, constituted itself as the Board of Canvassers and proclaimed Aguindadao as the duly elected vice-mayor of La Trinidad (p. 88, Rollo).

The said resolution and order of the Comelec were assailed by Digman in this petition for certiorari which he filed on January 26, 1981 and which is a continuation of a pre-proclamation controversy.

We hold that we should not disturb the Comelec's factual finding that Digman changed his party affiliation from KBL to NP within six months preceding the election and that, therefore, he was disqualified to run under the NP banner and his opponent should be the one proclaimed in his stead. That is a settled matter. (Sec. 10, Art. XII[C], Constitution; Sec. 7, Batas Pambansa Blg. 52; Presidential Decrees Nos. 1661 and 1161-A; *Gabatan vs. Comelec*, G.R. No. 52381, January 25, 1980; *Evasco vs. Comelec*, G.R. No. 52401, January 28, 1980; *Sandalo vs. Comelec*, G.R. No. 52737, August 31, 1981, 107 SCRA 132; *Santos vs. Comelec*, G.R. No. 52390, March 31, 1981, 103 SCRA 628; *Ticzon vs. Comelec*, G.R. No. 52451, March 31, 1981, 103 SCRA 671; *Geronimo vs. Comelec*, G.R. No. 52413, September 26, 1981, 107 SCRA 614.)

The case of *Venezuela vs. Commission on Elections*, G.R. No. 53532, July 25, 1980, 98 SCRA 790, refers to a

situation where Noli M. Venezuela filed on February 19, 1980 the petition to disqualify, on the ground of turncoatism, Artemio R. Saldivar, who was proclaimed mayor of Pozorrubio, Pangasinan on February 6, 1980. The Comelec dismissed the petition. Venezuela assailed that dismissal order in this Court.

We dismissed Venezuela's certiorari petition with the directive that he could file before the proper court an election protest or a quo warranto proceeding. That ruling is not appropriate for this case which, as already stated, involves a pre-proclamation controversy on the issue of turncoatism and where the municipal board of canvassers proclaimed the petitioner in defiance of the Comelec's directive to withhold his proclamation as vice-mayor.

WHEREFORE, Digman's petition is dismissed with costs against him.

SO ORDERED.

Makasiar, Concepcion Jr., Guerrero, Melencio-Herrera, Plana, Escolin, Relova and Gutierrez, Jr., JJ., concur.
Fernando, C.J. and Vasquez, J., in the result.
Teehankee and Abad Santos, JJ., see dissent below.
De Castro, J., see concurring.

DISSENTING OPINION

ABAD SANTOS, J.:

I dissent. Partly for the reasons stated in the dissent of Justice Teehankee, I vote to grant the petition. Moreover, I do not think that a hearing is necessary. After Digman had been proclaimed as vice-mayor of La Trinidad, Benguet, and had qualified for the office, the remedy against Digman is an election protest or quo warranto proceedings.

SEPARATE CONCURRING OPINION

DE CASTRO, J.:

This separate opinion is only to point out that the procedure indicated in the dissenting opinion of Mr. Justice Teehankee based on the earlier rulings cited by him^[1] (assuming they are applicable), would seem to me, on giving the matter deeper thought, as striking a discordant note to what has been said in praise of the on-going reorganization of the judiciary whose primordial aim is the fast and quick disposition of cases, and with the least expense.

Under the procedure suggested, a new case has to be brought before the Court of First Instance (now Regional Trial Court) with same issue raised in the case filed with the COMELEC before the election, and decided by it before proclamation on January 31, 1980. It is almost a certainty that the decision of the Regional Trial Court would be appealed to the COMELEC which having already passed upon the very same issue, may predictably merely reiterate the conclusion it has reached, at least prima facie, as early as January 31, 1980 when it sent a telegraphic order to the Board of Canvassers to withhold the proclamation of Digman, who nevertheless was proclaimed and allowed to take oath on February 5, 1980, in violation of the COMELEC's order.

The extended Resolution, it is true, was released only on August 27, 1980 in favor of the respondent. This is obviously because the case involved only the position of Vice Mayor, and it must have been given lesser priority to many other cases involving higher and more important positions. Verily, petitioner would be occupying the

position possibly most of the entire term, considering that from the filing of the action in the Regional Trial Court, up to a final decision which may be obtained only after a petition for review shall be decided by the Supreme Court in favor of the herein respondent, as the majority opinion would unmistakably indicate, not only months but years shall have lapsed.

Certainly, a procedure productive of such undesirable effects does not commend itself for approval, specially in the light of the objective so much stressed by the recent judiciary reorganization which affects not only judicial but also quasi-judicial bodies. The obnoxious result where the lawfully qualified candidate would be deprived of his right to the office, the long long while that petitioner would be occupying the position illegally, assuredly and by all means, must be avoided. The majority opinion would most laudably prevent such a result, reason for which, I give my full concurrence to said opinion.

[1] Venezuela vs. Comelec, 98 SCRA 790; Disini vs. Comelec, G.R. No. 52502, December 30, 1982.

DISSENTING OPINION

TEEHANKEE, J.:

"Once more, the tar of 'turncoat' is used to stifle and subvert the verdict of the electorate, and nullify the overwhelming majority of almost two to one that they gave petitioner as against his respondent opponent (6,820 votes against 3,811 votes).

"How could there be 'turncoats' from the KBL when by official pronouncements of this very Court in the Peralta and Laban cases of 1978, the dominant and newly founded KBL was held to be not a political party but an umbrella organization of all existing political parties, and that in the future, the 'loyal and die-hard' Nacionalista party members running under the KBL umbrella would be free 'to join the party of their choice, assuming the KBL will eventually evolve into a new political party'? (82 SCRA 196) And in parrying the charge of turncoatism against those who ran in the 1978 elections as KBL's, the Court stressed in the Peralta case (82 SCRA 30) that 'a narrow construction may discourage the robust exercise of the right of association guaranteed by the Bill of Rights,' and '(I)t is, therefore, necessary at this stage to encourage the emergency or growth of political parties that will truly reflect the opinions and aspirations of our people. The right of individuals to form associations as guaranteed by the fundamental law, includes the freedom to associate or refrain from association. In accord with this constitutional precept, it is recognized that no man is compelled by law to become a member of a political party, or, after having become such, to remain a member.' This was the law of the land at the time of the 1980 elections.

"Furthermore, it is undisputed that the KBL did organize itself as a political party and register as such with the Comelec only in December, 1979 after the sudden calling on December 16, 1979 of the local elections for January 30, 1980 and therefore the NP's could disengage themselves from the KBL as converted into a political party and return to their original party, as was held by this Court in the case of Assemblyman Edelmiro Amante (Case G.R. No. 52375) whose contention before this Court was that he has always been a Nacionalista and his disqualification by the Comelec from running for the office of governor of his home province of Agusan del Sur as NP on the ground that he had been elected as a KBL assemblyman was set aside in the Court's Resolution of January 26, 1980.

"The majority Resolution once more also points up the uneven and uncertain hand with which is applied the principle 'invariably adhered to' since Venezuela vs. Comelec, and reiterated just last December 30, 1982 by the

Chief Justice in *Disini vs. Comelec*, G.R. No. 52502, 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.' If this principle were but evenly and indiscriminately applied, the Court would, as in the restraining order of January 27, 1981 issued by it, strike down the questioned Comelec action after almost a year of inexplicably plucking out the present disqualification case from the hundreds of unresolved disqualification cases that had become moot and declaring petitioner as a turncoat, and worse, constituting itself as a canvassing board and proclaiming the repudiated loser as the lone and 'winning' candidate—since petitioner had been voted for, duly proclaimed and assumed the office of vice mayor of La Trinidad, and therefore could be unseated only in a proper post-proclamation election protest or quo warranto proceeding. The Comelec's selective action frustrates the sovereign will of the electorate and constitutes a grave denial of equal protection of the laws and substantive due process and fair play.

"The Comelec was and is accordingly totally devoid of jurisdiction and authority to deal with the case, as a 'continuation of the pre-proclamation case for disqualification,' since petitioner as the overwhelming winner had been duly proclaimed and assumed the office under the doctrine of *Venezuela*, *supra*, and under the provision of the Election Code that disputes involving a municipal office fall within the original jurisdiction of the Court of First Instance.

"Much less could the Comelec disregard the established ruling since 1912 of *Topacio vs. Paredes* (23 Phil. 238) that a repudiated loser who succeeds in disqualifying the winner cannot take the place of the winner. As the now Chief Justice underscored in *Badelles vs. Cabili* (27 SCRA 113, 121):

'As Justice Laurel correctly pointed out: 'As long as popular government is an end to be achieved and safeguarded, suffrage, whatever may be the modality and form devised, must continue to be the means by which the great reservoir of power must be emptied into the receptacular agencies wrought by the people through their Constitution in the interest of good government and the commonweal. Republicanism, insofar as it implies the adoption of a representative type of government, necessarily points to the enfranchised citizen as a partake of popular sovereignty and as the ultimate source of the established authority.

'A Republic then to be true to its name requires that the government rest on the consent of the people, consent freely given, intelligently arrived at, honestly recorded, and thereafter counted. Only thus can they be really looked upon as the ultimate source of established authority. It is their undeniable right to have officials of their unfettered choice. . .'

"Such established doctrines cannot be disregarded through minute resolutions which do not confront many other vital issues in the case at bar, e.g. that the Comelec justification, as against its disenfranchisement of the innocent voters who voted overwhelmingly for petitioner, that they 'were aware of the disqualification case and assumed the risk' is a gratuitous assumption considering that the disqualification case was filed with the Comelec in Manila, which is more than 250 kilometers from La Trinidad and the poor means of communication between Manila and Benguet (and other provinces for that matter) is so notorious that judicial notice may be taken that the last-hour disqualification order issued by Comelec never reached the knowledge of the voters; and that the Comelec denied petitioner rudimentary procedural due process as mandated by the Constitution and the 1978 Election Code itself (Sec. 185[1]) in that it summarily resurrected the moot disqualification case (PDC 110) and issued its post-election disqualification orders dated August 27, 1980 and December 16, 1980 without giving petitioner any opportunity to continue with the presentation of his evidence and to rest his case, summarily rejecting without hearing as a 'forgery' the 'Affidavit of Waiver' submitted by petitioner wherein his respondent-opponent waived further prosecution of the disqualification case, notwithstanding that the same

involved a vital question of fact on which the reception of evidence was necessary. The very least that could be done, as a matter of simple justice, is for the Court to set the case for hearing and full discussion of the issues in oral argument."

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