

ANTONIO S. MIRO, PETITIONER, VS. COMMISSION ON ELECTIONS AND CAYETANO B. CAUAN, RESPONDENTS.

G.R. No. 57574. April 20, 1983

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Petitioner seeks the reversal of the decision of the Commission on Elections which affirmed the order dated May 27, 1980 of the Court of First Instance of Isabela, Branch III, dismissing the petition of protest filed by him in Election Case No. III-320 for lack of jurisdiction.

The records show that on February 9, 1980, petitioner Miro filed the election protest before the Court of First Instance, alleging, inter alia:

"3. That on _____, 1980, the Municipal Board of Canvassers of San Pablo, Isabela, declared the herein contestee Cayetano B. Cauan (who) obtained 3,304 votes as against 2,133 votes adjudicated unto herein contestant Antonio S. Miro and therefore proclaimed said Cayetano B. Cauan as the Municipal Mayor-elect of San Pablo, Isabela;

"

"7. That the petition was presented within the period fixed by law."[1]

On March 11, 1980, private respondent as protestee filed his answer with counter protest and motion to dismiss, admitting that he was proclaimed as the duly elected candidate for Mayor of San Pablo, Isabela, submitting therein, as annex of said answer, a copy of the Certificate of Canvass and Proclamation issued by the Municipal Board of Canvassers, and praying that the case be dismissed on the ground that the jurisdictional allegations that contestant has filed a certificate of candidacy and of the date of proclamation have not been alleged in the petition of protest.[2]

On May 27, 1980, the Court of First Instance issued an order[3] dismissing the election protest on the sole ground that the failure of the protestant to allege the date of proclamation of the protestee renders the court without jurisdiction to try and decide the protest, citing the case of Yumul vs. Palma.[4]

From the aforesaid order of dismissal, petitioners appealed to the COMELEC, which as adverted to above, affirmed the order of dismissal, stating that the "omission is a fatal defect as it is jurisdictional; in other words, it (the CFI) did not acquire jurisdiction to hear and decide the case from the very start and the only mandatory course of action for it to take is to dismiss, as it did, the said protest."[5]

The law applicable is Section 190 of P.D. No. 1296, otherwise known as the Election Code of 1978, which provides that:

"Sec. 190. Election contests for municipal and municipal district offices.- A sworn petition contesting the election of a municipal or municipal district officer shall be filed with the proper Court of First Instance by any

candidate for the same office who has duly filed a certificate of candidacy, within ten (10) days after the proclamation of the election."

This provision is amplified by Section 2, Rule II of Resolution No. 1451, promulgated by COMELEC on February 26, 1980 under the authority of the 1978 Election Code in relation to Section 18 of Batas Pambansa Blg. 52, thus:

"Sec. 2. Filing of election contests. 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."

We can readily see from the foregoing that in order that the Court of First Instance may be able to exercise special or limited jurisdiction in election cases, the following special or jurisdictional facts must be alleged in the election protest, to wit:

- that the protestant was a candidate who has duly filed a certificate of candidacy and was voted upon in the election;
- that the protestee has been proclaimed in the said election; and
- that the petition was filed within ten (10) days after the proclamation.

There is no question that the petition of protest contains averments that sufficiently comply with the first two (2) requisites of jurisdiction. The only question hinges on the third requisite. Paragraph 7 of petitioner's petition of protest claims that the same "was presented within the period fixed by law." Generally, such averment is not sufficient assurance that the petition was indeed filed on time, absent a showing of the date to reckon the timeliness of the filing of the petition. Thus, in the Yumul case, cited by respondent court, the latter dismissed the case for lack of jurisdiction, it appearing that the motion of protest merely shows that the general elections were held on April 5, 1928 and the motion of protest was filed on April 24, 1928, or twenty (20) days after the election day, such that the court was unable to determine whether it was filed within two (2) weeks following the proclamation.

Where, however, even without a statement of the date of the proclamation, the timeliness of the filing of the petition of protest could be determined in some way, the court must not close its eyes to the facts and dismiss the case by mere technicality.^[6] Thus, even in the Yumul case, the court said that the protestant's compliance with the mandatory provision of law requiring that an election protest must be filed within two (2) weeks following the date of the elected candidate's proclamation must appear either expressly or by implication. In other words, where the court, on the basis of the records of the case, can infer that the case was filed on time, the court is with jurisdiction to try and decide the case.

In this case, We hold that the absence of averment as regards the date of the proclamation, is not fatal so as to prevent the court from acquiring jurisdiction over petitioner's petition of protest. The mere fact that the petition of protest was filed with the Court of First Instance on February 9, 1980 as the records will show, is presumptive of the fact that the petition of protest was filed within the ten (10) day period, considering that the elections were held on January 30, 1980. Respondent-protestee's admission in his answer with counter-protest and motion to dismiss of his proclamation, attaching thereto the certificate of canvass and proclamation showing that he was proclaimed on January 31, 1980 erases all doubts as to the timeliness of the filing of the protest. By these facts, therefore, it becomes undisputable that the petition of protest was filed on time and respondent court should not

have dismissed the case.

This is an opportune time to recall the recognized principle that laws governing election protests must be liberally interpreted to the end that the popular will expressed in the election of public officers will not, by reason of purely technical objections, be defeated.[7]

WHEREFORE, the questioned decision of the Commission on Elections is hereby set aside, and the Court of First Instance of Isabela, Branch III, hereby ordered to give due course to the petition.

No costs.

SO ORDERED.

Fernando, C.J., Makasiar, Concepcion Jr., Guerrero, Abad Santos, Melencio-Herrera, Plana, Escolin, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

Teehankee, J., I concur. The record and protest conclusively show on their face that the protest, filed on Feb. 9, 1980 was filed within the 10-day period counted from Jan. 30, 1980 election day and the earliest day that there could have been a proclamation.

Aquino, J., on leave.

[1] pp. 9-20, Annex "A" to the petition.

[2] Ibid, Annex "B" to the petition.

[3] Ibid, Annex "C" to the petition.

[4] 52 Phil. 412.

[5] p. 34, Rollo, Annex "D" to the petition.

[6] See Nisperos vs. Araneta, Diaz & Flores, 47 Phil. 806.

[7] De Leon vs. Duadiz, Jr., 104 SCRA 591; See also Maquinay vs. Bleza, 100 SCRA 702.

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