

MANUEL I. SANTOS, PETITIONER, VS. THE COMMISSION ON ELECTIONS AND RICARDO J. RUFINO, RESPONDENTS.

G.R. No. 58512. July 23, 1985

Ponente: CUEVAS, J.

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CUEVAS, J.:

Assailed and challenged in this special civil action of certiorari and mandamus, for allegedly having been issued without jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction, is the Resolution of the respondent Commission on Elections (COMELEC) dated October 3, 1981, issued in PDC No. 66 and PPC No. 379, the dis-positive portion of which reads as follows —

"Considering that after declaring all the votes received by respondent Manuel I. Santos as stray votes and therefore should not be counted, Ricardo J. Rufino should be proclaimed as duly elected Mayor for having obtained the highest number of votes as appearing in the canvass of votes submitted by the board of canvassers in connection with the January 30, 1980 elections for the position of Municipal Mayor of Taytay, Rizal, NOW THEREFORE, this Commission (Third Division) RESOLVES as follows:

1. To recall and revoke the proclamation of Manuel I. Santos as the duly elected Mayor of Taytay, Rizal made by the board of canvassers on January 30, 1980;
2. To proclaim Ricardo J. Rufino who received 11,137 votes as the duly elected Mayor of Taytay, Rizal in the January 30, 1980 elections; and
3. To direct Ricardo J. Rufino to take his oath of office and assume the duties and functions of said office.

SO ORDERED."

Petitioner Manuel I. Santos was the Nacionalista Party candidate for Mayor of Taytay, Rizal in the January 30, 1980 general local elections. Private respondent Ricardo J. Rufino, on the other hand, was the KBL official candidate for the same position. Earlier, however, or to be more precise, on January 14, 1980, a disqualification case on ground of turncoatism was filed with the Comelec against the herein petitioner by Ricardo Naval and Juanita Limson, duly registered voters of Taytay, Rizal. The case was docketed as PDC No. 66. On January 19, 1980, the Comelec issued Resolution No. 8409 disqualifying petitioner from being a candidate for Mayor of Taytay, Rizal.

Petitioner elevated to this court on certiorari^[1] Comelec's aforesaid resolution disqualifying him to run as mayor of Taytay. The petition prayed for the issuance of a restraining order against the enforcement of the questioned resolution which We granted in order to give petitioner a chance to be voted for since the question of his disqualification could not be resolved because of time constraints. On January 30, 1980, while the disqualification case was still pending with this Court, petitioner was, upon completion of the canvass, proclaimed Mayor of Taytay having garnered the highest number of votes (15,463) cast in the said mayoralty election. Private respondent Ricardo J. Rufino came next with 11,137 votes; and Benjamin P. Esguerra, a poor third with 130 votes, per canvass of votes prepared and signed by the Chairman and members of the Municipal Board of

Canvassers.

Following petitioner's proclamation, private respondent filed on February 11, 1980 with the Comelec a Petition for "Recanvass, Annulment and/or Suspension of Proclamation" which was docketed therein as PPC Case No. 379 and ordered consolidated with PDC No. 66. Finally, in a Resolution promulgated on March 31, 1981 this Court,[2] affirmed the disqualification of the petitioner and upheld the validity of the Comelec's assailed resolution.

Capitalizing on this development, private respondent filed on April 22, 1981, a "Motion for Proclamation" in PDC No. 66 and PPC No. 379, praying for his proclamation as the elected Mayor of Taytay, Rizal, alleging among others, that petitioner Santos was disqualified by the Comelec from running as mayor of Taytay, Rizal in PDC Case No. 66 in the local elections of January 30, 1980 on ground of political turncoatism per Comelec Resolution No. 8409; that petitioner Santos appealed said resolution to this Court[3] which affirmed the aforesaid Comelec's Resolution in a decision dated March 31, 1981; and that petitioner Santos having been disqualified from running for mayor of Taytay, Rizal, he is therefore considered a non-candidate and whatever votes obtained by him must be disregarded and should not be counted.

Petitioner Santos filed his opposition to the private respondent's motion for proclamation arguing that the Monsale vs. Nico[4] doctrine relied upon by respondent Rufino could not be applied to his case since said case involved a candidate who withdrew his candidacy; whereas, in the case at bar, a candidate was disqualified. Moreover, petitioner argues that the Monsale doctrine had already been abandoned in the subsequent case of Luison vs. Garcia,[5] wherein it was held that despite the ineligibility of the winning candidate who insisted to run for election, the opponent who obtained the second highest number of votes does not thereby become entitled to the contested office. Furthermore, respondent Rufino is estopped from having himself proclaimed as mayor having questioned in PPC No. 379 — the legality, accuracy and validity of the election returns on ground of alleged irregularity committed during the election.

In view of the pendency of petitioner's Motion for Reconsideration with this Court, Comelec deferred action on respondent Rufino's motion for proclamation. On October 15, 1981, however, this Court denied petitioner's motion for reconsideration. Thereafter, the Comelec, upon motion of respondent Rufino, in a Resolution dated October 23, 1981, which is now assailed, recalled and revoked the proclamation of petitioner as the duly elected mayor of Taytay, Rizal, and proclaimed private respondent Rufino as the duly elected Mayor of Taytay, Rizal in the January 30, 1980 elections. Comelec likewise directed respondent Rufino to take his oath of office and to assume the duties and functions of the said office. On October 27, 1981, respondent Rufino took his oath of office and assumed the duties and functions of the Municipal Mayor of Taytay, Rizal.

Unable to obtain a favorable reconsideration of Comelec's Resolution No. 8409, petitioner now comes before this Court through the instant petition praying for the nullification of the said Resolution of October 23, 1981, and for the issuance of an Order directing respondent Comelec to cease and desist from enforcing and/or implementing said Resolution.

The petition is devoid of merit. Consequently, its dismissal is in order.

The alleged lack of jurisdiction and/or grave abuse of discretion amounting to lack of jurisdiction imputed against respondent Comelec consists in the latter's decreeing respondent Rufino's proclamation which allegedly was never the subject of pleadings in PDC No. 66 and PPC No. 379. Petitioner argues that respondent Rufino was never a party in PDC No. 66 and therefore his proclamation as the elected Mayor can not be dealt with nor passed upon much less adjudicated by the respondent Comelec in resolving the said case. With respect to PPC No. 379, although private respondent was a party thereto, nevertheless the issues involved therein has no relation to the

disqualification of the petitioner but the irregularities allegedly committed during the elections. Hence, Comelec's questioned Resolution proclaiming private respondent has no factual nor any legal basis.

An examination of the pleadings filed in PDC No. 66 and PPC No. 379 readily disputes and controverts petitioner's aforesaid submittal. For in PPC No. 379, private respondent Rufino expressly and specifically prayed that he be proclaimed as the duly elected Mayor of Taytay, Rizal.[6]

With respect to PDC No. 66, Comelec having disqualified petitioner as a mayoralty candidate thus declaring him a noncandidate, it became legally incumbent upon the Comelec to proclaim the rightful winner in the said elections — a function and duty encompass within its exclusive authority to enforce and administer all laws relative to the conduct of elections pursuant to Sections 2(1) and 3 Art. 12 C of the Constitution; and Arts. 185, 168 and 169 of the Election Code. The Comelec, therefore, in proclaiming private respondent as mayor elect, after having resolved the pending pre-proclamation controversy between petitioner and private respondent was simply complying with its legal duty under the law and the constitution.

Furthermore, the record indubitably shows that as early as April 20, 1981, private respondent had, by a motion filed with the Comelec, sought his proclamation as the duly elected mayor of Taytay, Rizal. Said motion was a litigated motion and vehemently opposed by petitioner. Nowhere however in petitioner's formal written opposition to the said motion has he ever set up the defense, much less advanced the argument, of lack of jurisdiction and authority on the part of respondent Comelec to act on said motion. Petitioner's opposition centered merely on the pendency with this Court of his motion for reconsideration of the decision affirming his (petitioner's) disqualification. That motion for reconsideration was, however, denied by this Court on October 15, 1981 which finally wrote finis to petitioner's questioned disqualification.

Petitioner further insists that respondent Rufino's proclamation must be raised and dealt with in another judicial proceeding. Such a stand is decidedly in derogation of the rule against multiplicity of suits and more importantly, repugnant to the rules governing speedy disposition of election controversies in order to give meaning and effect to the choice of the electorate. We see nothing, much less perceive any legal impediment that bars or prohibits respondent Comelec in PDC No. 66 and PPC No. 379 from passing upon and resolving the question of respondent Rufino's proclamation. From the practical view point, the present petition does not even by a bit advance petitioner's cause. For even assuming that his premises are correct, all that need be done is to proclaim private respondent as the winner in the January 30, 1980 elections. And whatever glimmer of hope petitioner may have entertained must have been totally blasted by this court's final declaration that he is disqualified as mayoralty candidate of Taytay, Rizal.

Anent petitioner's contention that his disqualification does not

"Any vote cast in favor of a candidate who has been disqualified shall be considered as stray and shall not be counted but it shall not invalidate the ballot." (Underscoring supplied)

Considering that all the votes garnered by the petitioner are stray votes and therefore should not be counted, We find no error, much less any grave abuse of discretion on the part of the Comelec, in proclaiming private respondent Ricardo J. Rufino as the duly elected Mayor of Taytay, Rizal, he having obtained the highest number of votes as appearing and certified in the canvass of votes submitted by the Municipal Board of Canvassers petitioner having been legally disqualified. Such a proclamation finds legal support from the case of Ticzon vs. Comelec, 103 SCRA 671, wherein disqualified candidate Ticzon likewise questioned the legality of the Resolution of the Comelec which not only disqualified him but further proclaimed Dizon, the only candidate left for the disputed position, and this Court upheld the proclamation of Cesar Dizon as Mayor of San Pablo City.

Finally, petitioner asks that we issue a writ of prohibition commanding Comelec to desist further from acting on

PDC No. 66 and PPC No. 379. Such a relief is no longer legally feasible private respondent having taken his oath of office wayback in October 21, 1981, and has since then been discharging the powers and duties of Mayor of Taytay, Rizal, thus rendering petitioner's cause moot and academic.

WHEREFORE, finding the instant petition without merit, the same is hereby DISMISSED. No pronouncement as to costs.

SO ORDERED.

Makasiar, Concepcion, Jr., Escolin, Relova, De La Fuente, and Alampay, JJ., concur.

Teehankee, Acting Chief Justice, files a separate dissent on the authority of the Court's recent near-unanimous decision in Geronimo that it is a terrible affront against the electorate to allow the repudiated loser to usurp the mayoralty against their express will and mandate.

Aquino, J., see concurring opinion.

Abad Santos, J., joins with J. Melencio-Herrera.

Melencio-Herrera, J., I abide by their ruling in Geronimo vs. Ramos, G.R. No. 60504, May 17, 1985, and accordingly, dissent.

Plana and Gutierrez, Jr., reserve their votes in this case.

Gutierrez, Jr., J., because of this Court's decisions in Yanson v. COMELEC, G.R. No. 52713, January 31, 1985 and Geronimo v. Ramos, G.R. No. 60504 and two related cases, May 14, 1985, I RESERVE my vote in this case.

Fernando, C.J., on official leave.

[1] G.R. No. L-52390.

[2] G.R. No. 52390, 103 SCRA 628.

[3] G.R. No. 52390.

[4] 83 Phil. 758.

[5] 103 Phil. 453.

[6] Par. 3 of the prayer, p. 9, Annex "A".

CONCURRING OPINION

AQUINO, J.:

I concur. Manuel I. Santos was disqualified by the Commission on Elections in its resolution of January 19, 1980 to run for mayor of Taytay, Rizal on the ground of turncoatism. He had changed his party from Kilusang Bagong Lipunan to Nacionalista.

That disqualification was not immediately enforced because Santos assailed it in this Court in G. R. No. 52390. In the meantime, he continued to be the Nacionalista candidate for mayor in the election of January 30, 1980. He obtained 15,463 votes while Ricardo J. Rufino, the KBL candidate, garnered 11,137 votes. Santos was proclaimed mayor on January 31, 1980.

On March 31, 1981 this Court in G. R. No. 52390 upheld the Comelec's resolution of January 19, 1980 (Santos vs. Comelec, 103 SCRA 628). On April 30, 1981 Rufino filed with the Comelec a motion for his proclamation. The resolution of that motion was deferred because of Santos' motion for reconsideration in this Court in G. R. No. 52390 which was denied on October 15, 1981.

The Comelec on October 23, 1981 revoked Santos' proclamation and proclaimed Rufino as duly elected mayor. Rufino took his oath as mayor on October 27, 1981.

Santos questioned the Comelec's resolution in this Court by means of certiorari and mandamus. It should have been dismissed outright. We have no power to issue mandamus against the Comelec. Our power is confined to the review by certiorari of a decision of the Comelec, a very limited power as explained in *Aratuc vs. Comelec*, 88 SCRA 251.

The Comelec, in a pre-proclamation controversy, found that Santos had changed his party affiliation from KBL to NP within six months preceding the election. He was disqualified to run for mayor. The votes obtained by him were stray votes pursuant to section 155(24) of the 1978 Election Code. The Comelec acted correctly in sustaining the proclamation of his opponent, Rufino, as mayor (Sec. 10, Art. XII[C], Constitution; Sec. 7, Batas Pambansa Blg. 52; Presidential Decrees 1661 and 1661-A; *Gabatan vs. Comelec*, G. R. No. 52381, January 25, 1980; *Evasco vs. Comelec*, G. R. No. 52401, January 28, 1980; *Sandalo vs. Comelec*, 107 SCRA 132; *Santos vs. Comelec*, supra; *Ticzon vs. Comelec*, 103 SCRA 671; *Geronimo vs. Comelec*, 107 SCRA 614; *Digman vs. Comelec*, 120 SCRA 650).

DISSENTING OPINION

TEEHANKEE, Acting C.J.:

Substantively, the 8-member majority decision[1] at bar is at war with the 10-member near-unanimous decision[2] of May 14, 1985 in *Geronimo vs. Pendre and Comelec* wherein we held that

"The importance of the people's choice must be the paramount consideration in every election, for the Constitution has vested in them the right to freely select, by secret-ballot in clean elections, the men and women who shall make laws for them or govern in their name and behalf. The people have a natural and a constitutional right to participate directly in the form of government under which they live. Such a right is among the most important and sacred of the freedoms inherent in a democratic society and one which must be most vigilantly guarded if a people desires to maintain through self-government for themselves and their posterity a genuinely functioning democracy in which the individual may, in accordance with law, have a voice in the form of his government and in the choice of the people who will run that government for him. (See also *U.S. v. Iturrius*, 37 Phil. 765). Thus, it would be extremely repugnant to the basic concept of the constitutionally guaranteed right to suffrage if a candidate who has not acquired the majority or plurality of votes is proclaimed a winner and imposed as the representative of a constituency, the majority of which have positively declared through their ballots that they do not choose him,"

and "(S)ound policy dictates that public elective offices are filled by those who have received the highest number of votes cast in the election for that office, and it is a fundamental idea in all republican forms of government that no one can be declared elected and no measure can be declared carried unless he or it receives a majority or plurality of the legal votes cast in the election." Withal, there may be procedural technicalities in this case as invoked in the majority judgment.

But there are substantive matters here that need to be clearly set forth. Where as in this case, as in *Geronimo*, the

votes were counted and petitioner Santos here unquestionably emerged and was proclaimed as the choice for mayor of the Taytay electorate (in Geronimo, he likewise was the clear choice for Mayor of the Baras electorate and so proclaimed), there can no longer be any pre-proclamation controversy. The remedy of the supposed concerned voter(s) who questioned the qualifications of the winners (as supposed political turncoats from the KBL which was not even a political party but merely an umbrella organization or movement) and their principals — the opponents-losers — is to pursue their suit for disqualification of the winners in a separate suit as provided by law. They cannot usurp the winners' mantle of victory. A failure of election results and the elected and proclaimed vice mayor takes over as mandated by law.[3] The votes of the proclaimed winners cannot be considered as stray votes. Nor can the winners be considered by fiction as against reality as "non-candidates" as the majority decision conjures.[4] At the very least, even though only one qualified candidate remains — respondent loser — the electorate has clearly voted NO against him and repudiated him. (Not even in the totalitarian states where they could only vote yes or no for one single candidate, would such candidate be imposed on the electorate if it rendered a no vote.) As the Court has stressed time and again, the candidates are merely incidental in election cases. The real party in interest is the electorate as particles of sovereignty and the function of the Comelec and of this Court is to determine and uphold their true will and verdict.

I stand by my concurrence in Geronimo that the settled and unquestioned doctrine in election cases is that the disqualification of the winner does not entitle the defeated and repudiated candidate to claim and usurp the elective office involved. As I have stressed before, such action would violate the express mandate of the 1980 local election law on succession that where the elected mayor "fails to qualify ... the vice mayor ... shall assume the office." It would also disregard the unbroken line of jurisprudence which is the law of the land since the 1912 case of *Topacio vs. Paredes* (23 Phil. 238 [1912]) that "the effect of a decision declaring a person ineligible to hold an office is only that the election fails entirely," that "the wreath of victory cannot be transferred" from the disqualified winner to the repudiated loser because the law then as now "only authorizes a declaration of election in favor of the person who has obtained a plurality of votes" and "does not entitle the candidate receiving the next highest number of votes to be declared elected. In such case, the electors have failed to make a choice and the election is a nullity." To allow the defeated and repudiated candidate to take over the mayoralty despite his resounding rejection by the electorate is to disenfranchise the electorate without any fault on their part and to undermine and destroy the essence of democracy and the people's undeniable right to have officials of their unfettered choice. To allow the questioned Comelec resolution to stand is to sanction a terrible affront against the electorate of Taytay, Rizal thru the untenable transformation of the repudiated loser into a "winner" against their express will and mandate.

[1] The eight members are Makasiar, Aquino, Concepcion Jr., Escolin, Relova, De la Fuente, Cuevas, ponente, and Alampay, JJ. Dissenting are Teehankee, Abad Santos, and Herrera, JJ. Plana and Gutierrez, JJ. reserved their votes. Fernando, C.J. is on official leave.

[2] The ten members were Teehankee, A.C.J., Abad Santos, Herrera, Plana, Escolin, Relova, Gutierrez, ponente, De la Fuente, Cuevas and Alampay, JJ. Makasiar, J. reserved his vote. Aquino, J. took no part. Fernando, C.J. and Concepcion Jr., J. were on leave.

[3] Sec. 8 of Batas Pambansa Blg. 51 provides:

"SEC. 8. Succession to the office of the Governor, City or Municipal Mayor. — In case of a permanent vacancy that arises when a governor, city or municipal mayor refuses to assume office, fails to qualify, dies, is convicted by final judgment of a crime involving moral turpitude, resigns, is permanently incapacitated, or has been absent without authorization for more than three (3) consecutive months, the vice-governor, city

vice-mayor or municipal vice-mayor as the case may be, shall assume the office"

[4] At page 3.

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