

**ENCARNACION C. LUMANTAS, LOPE B. KAAMINO, JOSE G. TAN,
ERNESTO P. IRA, BERNARDO C. PALER, AND ROGELIO M. ARANAS,
PETITIONERS, VS. HONORABLE COMMISSION ON ELECTIONS,
CIRIACO C. P...**

G.R. No. 60092. December 26, 1984

Ponente: PLANA, J.

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PLANA, J.:

In this petition for certiorari, petitioners assail the decision dated February 24, 1981 of respondent Commission on Elections (COMELEC) which dismissed the quo warranto petition they had filed against private respondents based on alleged turncoatism.

In the 1971 elections, private respondents Percival Catane, Norberto Iyog, Ricardo Mancao, Ciriaco Pastrano and Jose Abuton were elected city councilors of Oroquieta City under the Liberal Party, private respondent Alaric Acosta as city councilor under the Nacionalista Party, and private respondent Constancio Micabalo as vice-mayor under the Liberal Party. The four-year term of these officials was from January 1, 1972 to December 31, 1975, but they continued holding office thereafter pursuant to Section 9 of Article XVII of the 1973 Constitution and Letter of Instruction No. 356 dated December 29, 1975 which directed elective local officials to continue in office beyond December 31, 1975 until duly replaced.

Thus, the private respondents were still officials of Oroquieta City when they ran for the positions of mayor, vice-mayor and members of the Sangguniang Panglungsod of the same City in the elections of January 30, 1980 under the banner of Kilusang Bagong Lipunan (KBL). Except for Constancio Micabalo, they all won and were proclaimed elected on February 1, 1980.[1]

A quo warranto petition against the private respondents[2] was filed with the COMELEC by the petitioners, the defeated Mindanao Alliance candidates for mayor and members of the Sangguniang Panglungsod of Oroquieta City. It was alleged that private respondents became KBL members only on December 30, 1979, that is, during their term of office as elective councilors of Oroquieta City, and within six months before the elections of January 30, 1980, in violation of the following provision of the 1973 Constitution:

"No elective public officer may change his political party affiliation during his term of office, and no candidate for any elective office may change his political party affiliation within six months immediately preceding or following an election." (Article XII(c), Sec. 10.)[3]

Hence, according to the petitioners, the private respondents were disqualified to be elected on the ground of turncoatism and should be ousted.

The COMELEC ruled that the term of office of private respondents as elected Officials of Oroquieta City expired on December 31, 1975. It also found that private respondents did affiliate with the KBL in April, 1978 by participating as officers thereof in the 1978 campaign for election of members of the Interim Batasang Pambansa.

The COMELEC therefore concluded that private respondents did not change their party affiliation during their term of office, nor within six months before the January 30, 1980 elections, and accordingly dismissed the petition as aforesaid.

From the adverse decision of the COMELEC, the petitioners have come to this court on two issues:

- (a) Whether the extended tenure of private respondents as local officials beyond the four-year term for which they were elected, is part of their "term of office" within the meaning of the erstwhile absolute Constitutional ban on elective public officers against changing their political party affiliation during their term of office; and
- (b) Whether private respondents changed their political party affiliation, i.e., became KBL members within six months before the elections of January 30, 1980.

As to the first issue, this Court has already ruled that for the purpose of applying the Constitutional provision on turncoatism to local officials who were elected in 1971 for a four-year term ending on December 31, 1975, the period covered by their additional tenure beyond 1975 is not to be deemed a part of their "term of office". Speaking for the Court, Mr. Justice Felix V. Makasiar said:

"The period beyond December 31, 1975 is no longer within the coverage of the phrase 'term of office' for which respondent was elected as a Liberal candidate for purposes of applying the constitutional prohibition.

"x x x A public officer is prohibited from changing political party affiliation during his term of office to prevent opportunism of one who after having been catapulted to office with the help of a political party simply abandons his party and switches to another, while serving his term, thereby ignoring the meaning of the electoral results and making a mockery of the popular will. But if the change took place after the expiration of the term to which he had been elected under a particular party, as in this case, where private respondent ran as a KBL four (4) years after the expiration of his four-year term on December 31, 1975, then the prohibition does not apply, for the reason that, that part of his term from December 31, 1975 up to March 2, 1980, was not by virtue of his having been elected as a Liberal x x x." (Provincial Chapter of Laguna, Nacionalista Party vs. Comelec, 122 SCRA 437 at 442.)

As to the second issue, we sustain the COMELEC finding that private respondents became KBL members in 1978 rather than in 1979, not through any formal ceremony, but by actual affiliation through overt acts when they actively identified themselves with the KBL, openly supported its candidates and adopted its political principles and ideals, after the KBL had already been transformed into a distinct political party, as held in *Sevilleja vs. COMELEC*:

"x x x after the decision in the case of *LABAN vs. COMELEC* (82 SCRA 196[1978]), the KBL was transformed into a distinct political party and ceased as a mere umbrella organization, as shown by subsequent political developments. x x x. The actions of the organizers, leaders and members of the KBL established the said party as a de facto political party since April, 1978. The acts performed by the KBL leaders and their members, not the formality of its registration as a party, should determine the commencement of its existence as such political party. x x x" (107 SCRA 141 at 156. See also *Geronimo vs. COMELEC*, 107 SCRA 614.)

We conclude that the private respondents do not fall within the terms of the Constitutional ban on political turncoatism.

WHEREFORE, the petition is dismissed.

SO ORDERED.

Fernando, C.J., Makasiar, Aquino, Concepcion, Jr., Abad Santos, Melencio-Herrera, Escolin, Gutierrez, Jr., De la Fuente, and Cuevas, JJ., concur.

Teehankee, J., I dissent on the same grounds stated in my dissent in Sevilleja, 141 SCRA at p. 161, and other cases therein mentioned, which are hereby reproduced by reference.

Relova, J., took no part.

[1] Respondent Ciriaco Pastrano, the elected mayor, died during the pendency of the instant case. He was substituted as principal respondent by vice-mayor Percival Catane who had assumed the mayorship.

[2] Respondent Micabalo, defeated KBL candidate for member of the Sangguniang Panglungsod, was included as party respondent in order to disqualify him and foreclose his right, if any, to succeed in office in case his co-respondents are all declared disqualified.

[3] This absolute prohibition has been amended so as to read:

"No elective public officer may change his political affiliation during his term of office, and no candidate for any elective office may change his political party affiliation within six months immediately preceding or following an election, unless otherwise provided by law."

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