

IN THE MATTER OF THE PETITION FOR HABEASCORPUS MELITON C. GERONIMO, PETITIONER, VS. LT. GEN. FIDEL V. RAMOS IN HIS CAPACITY AS CHIEF OF THE CONSTABULARY AND THE COMMISSION ON EL...

G.R. No. 60504. May 14, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

These interrelated petitions arose from the controversy over the mayoralty elections in 1980, wherein the petitioner who was elected to the post of mayor of Baras, Rizal was subsequently disqualified as a candidate for mayor by this Court's affirmance of the Commission on Elections' decision on the ground that he was a political turncoat.

The controversy stemmed from the following uncontroverted facts:

On January 8, 1980, private respondent Julian Pendre filed a petition with the Commission on Elections (COMELEC) to disqualify petitioner Meliton C. Geronimo from running as a candidate for the mayorship of Baras, Rizal on the ground of political turncoatism.

After hearing the petition, the COMELEC on January 19, 1980 issued Resolution No. 8305 disqualifying Meliton C. Geronimo. On January 22, 1980, Geronimo filed a motion to reconsider the said resolution, and on January 28, 1980 or two days before the elections, he filed with this Court a petition for certiorari to restrain the COMELEC from implementing its resolution. On the same day, this Court issued a temporary restraining order against the COMELEC.

In the elections of January 30, 1980, Geronimo obtained a margin of 325 votes when he garnered 2,695 votes as against his opponent Bayani Ferrera's 2,370 votes. On March 11, 1980, the COMELEC issued Resolution No. 9554, reinstating the proclamation made earlier by the Municipal Board of Canvassers of Baras, Rizal in favor of Geronimo as the winning candidate for mayor but the proclamation was declared temporary subject to the decision of this Court on the petition for certiorari filed by Geronimo.

On September 26, 1981, this Court rendered a decision in G.R. No. 52413, entitled "Meliton C. Geronimo v. Commission on Elections and Julian C. Pendre," dismissing the petition for certiorari and ordering the lifting of the restraining order of January 28, 1980. We ruled that Geronimo was disqualified to run as a candidate for mayor for being a political turncoat. The petitioner filed a motion for reconsideration but it was denied with finality on January 19, 1982.

On February 15, 1982, the COMELEC issued the questioned resolution No. 82-428 which set aside the temporary proclamation Geronimo appearing that the disqualification of said respondent Geronimo had been finally decided by the Supreme Court xxx" and which further provided for the following;

1. To declare the certificate of candidacy of Meliton C. Geronimo for the position of Mayor in the January 30, 1980 elections null and void from the beginning;
2. To declare all votes cast for Meliton C. Geronimo for Mayor in the January 30, 1980 elections as 'STRAY' votes;
3. To proclaim Bayani A. Ferrera, who garnered 2,370 votes, as the duly elected Mayor of Baras, Rizal in the January 30, 1980 elections;
4. To direct Meliton C. Geronimo to turn over to Bayani A. Ferrera the position and office of Municipal Mayor of Baras, Rizal.

On February 15, 1982, Geronimo filed a motion to defer action which was denied by the COMELEC in Resolution No. 82-429.

On February 17, 1982, Geronimo filed a motion for reconsideration followed on March 18, 1982 by an urgent motion to set aside COMELEC Resolution Nos. 82-428 and 82-429 with motion to enjoin Bayani Ferrera from exercising the functions of the mayor of Baras, Rizal. On March 22, 1982, the COMELEC denied Geronimo's motion for reconsideration.

On May 3, 1982, the petitioner together with some of his political followers of more than fifty persons entered en masse the Municipal Hall of Baras, occupied its premises and continued to do so until May 13, 1982, causing a paralyzation of official business in the municipality. During this period, Ferrera held office in his own house. Parenthetically, Geronimo did not enter the office of the mayor but stayed in another room in the municipal building.

On May 4, 1982, Pendre filed with the COMELEC a motion to cite and declare Geronimo in contempt. On May 10, Geronimo amended his urgent motion of March 18, 1982 and further moved to have the oath of office of Bayani A. Ferrera declared premature, ineffective, and void.

On May 12, 1982, the COMELEC after hearing, issued Resolution No. 82-605, finding Geronimo guilty of contempt and sentencing him to suffer an imprisonment of five (5) months and to pay a fine of P1,000.00. In said resolution, the COMELEC simply "noted" Geronimo's urgent motion because of its previous denial of his motion for reconsideration. The amended urgent motion was likewise "noted," since it was declared a mere repetition of what was already decided by the COMELEC.

At about 2:00 o'clock in the early morning of May 14, 1982, Geronimo and his followers, mostly women were forcibly taken out of the municipal hall of Baras, Rizal by the military with the use of teargas grenades. Gun shots were also fired by the Philippine Constabulary. Some of Geronimo's followers retaliated with empty bottles when they heard the breaking of the glass windows of the room where Geronimo was staying. The petitioner was seized, handcuffed, and brought to the National Penitentiary in Muntinlupa, Rizal.

Sometime between the months of April and May, 1982, a series of criminal charges were filed against Geronimo and his followers namely: Usurpation of Authority [Art. 177, Revised Penal Code (RPC)]; Violation of Usurpation of Authority of Official (sic) [Art. 177, Revised Penal Code (RPC)]; Tumultuous Affray [Art. 153, RPC]; Sedition (Art. 139, RPC); Illegal Possession of Firearms; Disobedience to a Person in Authority or the Agent of such Person (Art. 151, RPC) and Alarm and Scandal (Art. 155, RPC).

On May 39, 1982, Geronimo filed a petition for habeas corpus alleging that there is no legal basis for his arrest and detention since the COMELEC's resolution no. 82-605 holding him in contempt was issued with grave abuse of discretion and without jurisdiction. The petition was docketed as G.R. No. 60504.

On May 27, 1982, this Court issued a resolution ordering the release of Geronimo on his own recognizance, pending the determination by this Court of the petition's merits.

On May 31, 1982, Geronimo filed another petition docketed as G.R. No. 60591, seeking to annul and set aside COMELEC's resolution no. 82-605 declaring petitioner in contempt of the COMELEC and which also dismissed petitioner's motion to set aside COMELEC resolution nos. 82-428 and 82-429.

The third petition was filed by Geronimo and seventy-five (75) others on June 16, 1982, docketed as G.R. Nos. 60732-39, seeking the dismissal of the criminal complaints earlier filed against them in the months of March, April and May, 1982.

In the petition for the issuance of the writ of habeas corpus, Geronimo maintains that there is no legal basis for his detention. He contends that the resolution of the COMHLEC ordering his detention was issued with grave abuse of discretion or without jurisdiction. Geronimo anchors his charge that COMELEC committed grave abuse of discretion on three grounds: (1) that the questioned resolution was not properly promulgated; (2) that Ferrera did not acquire the plurality of votes for the mayorship of Baras; and (3) that Julian Pendre who filed the motion for contempt had no personality to institute the same because he did not file his candidacy for the position of mayor, of Baras, Rizal.

Section 3, Rule 71 of the Rules of Court which governs contempt proceedings only requires — (a) that a charge be made in writing and (b) that an opportunity be given to the accused to be heard by himself or counsel for certain acts enumerated in said rule, after which a person may be punished for contempt. As we held in *Aguador v. Enerio* (37 SCRA 164), "xxx there is no particular form prescribed by the Rules of Court in which a contempt charge shall be framed or described. There is also no requirement in the Rules of Court that a copy of the contempt charge shall be served on the respondent named therein when it is filed in court. All that Section 3, Rule 71 (formerly Rule 64) requires on this matter is that a charge in writing be filed. The respondent in a contempt proceeding is, of course, entitled to know the nature and cause of the accusation against him, but this requirement is properly satisfied when the court, after the respondent appears before it, reads to the respondent the complaint or furnishes him a copy thereof." Likewise, during the promulgation of the decision, the accused-respondent need not be present. It is enough that he is notified of the same other personally or by registered mail. Since the petitioner was duly notified of the charges against him and was given an opportunity to be heard, after which he was informed and shown a copy of the COMELEC resolution finding him guilty of contempt, there was sufficient compliance with the due process requirement in the contempt proceeding against him.

The fact that Ferrera did not acquire the plurality of votes for the mayorship of Baras and the fact that Julian Pendre did not file his candidacy for the said position are both immaterial to the charge of contempt. What is important is whether or not the petitioner committed contumacious acts in utter disregard of the COMELEC resolution which was issued pursuant to the decision of this Court.

The record shows that after hearing the petition filed by Julian C. Pendre, COMELEC issued Resolution No. 8305 disqualifying Meliton C. Geronimo for political turncoatism. The decision was based on Section 10, Article XII-C of the Constitution prior to its amendment in 1981 and on Presidential Decree No. 1661 and Batas Pambansa No. 52. As earlier stated, this decision of COMELEC was affirmed by this Court. Two motions for reconsideration were denied with finality and a third motion for reconsideration was no longer considered for deliberation but was merely noted. The regrettable defiance by the petitioner of a COMELEC decision affirmed by this Court and declared final is sufficient basis for the exercise of the contempt power.

Nonetheless, we take certain factual considerations into account. The petitioner was acting under strong political pressures from his followers. His defiance of the COMELEC may have been based on an erroneous interpretation

of the turncoatism provisions of the Constitution and statute as shown by our decision mG.R. No. S2413 dismissing Mr. Geronimo's petition. However, the emotional impulses which prodded him to act as he did must be understood in the light of his successful campaign for the mayorship and the happenstance that "turncoatism" was and remains a highly controversial and perplexing concept. As a matter of fact, the Constitution and the statute have been amended to allow political "turncoats" to run for member of the Batasang Pambansa in the last elections.

There was no grave abuse of discretion on the part of respondent COMELEC when it held the petitioner guilty of contempt. However, we find the penalty of five (5) months imprisonment to be harsh. Time and again, this Court has held that the power to punish for contempt should be exercised on the preservative and not on the vindictive principle, on the corrective and not on the retaliatory idea of punishment. (See *Repeque v. Aquilizan*, 130 SCRA 258; *Lipata v. Tutaan*, 124 SCRA 880, citing *Gamboa v. Teodoro*, 91 Phil. 270; and *People v. Alarcon*, 69 Phil. 265; *Yangson v. Salandanan*, 68 SCRA 43, *Balasabas v. Aquilizan*, 106 SCRA 502; and *Sulit v. Tiangco*, 115 SCRA 211-212).

We rule, therefore, that the thirteen (13) days during which the petitioner was confined in the National Penitentiary at Muntinlupa, Rizal more than suffice for the purpose of serving his sentence for contempt.

The second petition filed by Mr. Geronimo docketed as G.R. No. 60591, seeks to annul the same COMELEC Resolution No. 82-605, subject matter of the first petition for two reasons: (1) it declared petitioner guilty of contempt; and (2) it dismissed petitioner's urgent motion to set aside COMELEC Resolution Nos. 82-479 and 82-429 which, among others, proclaimed Ferrera as the winning candidate and directed herein petitioner to turn over to the former the position and office of the Municipal Mayor of Baras, Rizal.

As we have already disposed of the issue of contempt in the first petition, we shall deal only with the other matter covered by the questioned resolution.

The petitioner maintains that the COMELEC exceeded its power and jurisdiction when it proclaimed Bayani A. Ferrera as mayor of Baras, Rizal, in spite of the fact that he did not obtain the plurality of votes in the January 30, 1980 municipal elections.

We find this contention impressed with merit.

In the case of *Yason v. Comelec* (G.R. No. 52731, January 31, 1985), we ruled that:

"In elections, the first consideration of every democratic polity is to give effect to the expressed will of the majority. It is true that constitutional and statutory provisions requiring compliance with measures intended to enhance the quality of our democratic institutions must be obeyed. The restriction against turncoatism is one such measure. However, even as there should be compliance with the provision on turncoatism, an interpretation in particular cases which respects the free and untrammelled expression of the voters' choice must be followed in its enforcement."

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.

Sound 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. (20 Corpus Juris 2[nd], S 243, p. 676.)

The fact that the candidate who obtained the highest number of votes is later declared to be disqualified or not eligible for the office to which he was elected does not necessarily entitle the candidate who obtained the second highest number of votes to be declared the winner of the elective office. The votes cast for a dead, disqualified, or non-eligible person may not be valid to vote the winner into office or maintain him there. However, in the absence of a statute which clearly asserts a contrary political and legislative policy on the matter, if the votes were cast in the sincere belief that the candidate was alive, qualified, or eligible, they should not be treated as stray, void or meaningless. This is particularly true where, as in this case, there is only one other candidate who ran for the public office, The votes for the deceased or non-qualified candidate are still expressive of a public clamor that the majority of the voters do not like the losing candidate to be their representative or to hold the reins of government for them.

As early as 1912, this Court has already declared that the candidate who lost in an election cannot be proclaimed the winner in the event that the candidate who won is found ineligible for the office to which he was elected. This was the ruling in *Topacio v. Paredes* (23 Phil. 238) —

"Again, the effect of a decision that a candidate is not entitled to the office because of fraud or irregularities in the election is quite different from that produced by declaring a person ineligible to hold such an office, xxx If it be found that the successful candidate (according to the board of canvassers) obtained a plurality in an illegal manner, and that another candidate was the real victor, the former must retire in favor of the latter. In the other case, there is not, strictly speaking, a contest, as the wreath of victory cannot be transferred from an ineligible candidate to any other candidate when the sole question is the eligibility of the one receiving a plurality of the legally cast ballots, xxx"

The result is a failure of elections for that particular office. The winning candidate is not qualified and cannot qualify for the office to which he was elected. A permanent vacancy is thus created.

Section 48 of the Local Government Code, Batas Pambansa Big. 337, which provides:

"SEC. 48. Permanent Vacancy in the Office of the Governor, City or Municipal Mayor. — (1) In case a permanent vacancy arises when a governor, city or municipal mayor refuses to assume office, fails to qualify, dies or is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office, the vice-governor, city or municipal vice-mayor, as the case may be, shall assume the office for the unexpired term of the former."

xxx xxx xxx

merely reiterates the established and more democratic rule to meet the situation present in this case.

It is, therefore, patent that the COMELEC committed a grave error when it proclaimed the defeated candidate, Bayani Ferrera, elected to the office of mayor. After the ineligibility of Geronimo had been ascertained and after his proclamation was set aside, the COMELEC should have proclaimed the vice-mayor as entitled to the office

and not Ferrera who failed to obtain the plurality of votes in the election.

Anent the third petition, G.R. Nos. 60732-39, petitioners maintain that the criminal charges tiled against them are "excessive and harsh, obviously vindictive, harassing, intimidating and prosecuting, aimed primarily at discouraging and unnerving Meliton C. Geronimo from asserting his right to the mayorship of Baras to which the electorate of Baras, many of whom are his co-accused in the many criminal suits pending against them, has elected him.

It is an undisputed fact that all the criminal charges were the result of the events that transpired before and until the May 14, 1982 incident, when Mr. Geronimo was forcibly taken out of the municipal building of Baras by the military. The charges were also filed almost successively: one on March 20; one on April 12; one on April 14; two on May 4, two on May 14, and one on May 19, — and with the same court and presided over by the same judge. In one of the criminal complaints wherein about 75 people were charged, the warrants of arrest were issued on the same day that (he preliminary examination was conducted. Such a hasty and manifestly haphazard manner of conducting the preliminary examination to determine probable cause for the issuance of the warrants of arrest and eventually for the filing of the necessary information cannot be sanctioned by this Court. A judge must first satisfy himself of the existence of probable cause before issuing a warrant or order of arrest. The requirements are strict. (See *Placer v. Villanueva*, 126 SCRA 463). The examination must be legitimate and not a feigned one intended to justify a course of action already predetermined.

In the very recent case of *Salonga v. Pano, et al.*, (G.R. No. 59924, February 18, 1985) we had occasion to underscore the importance and purpose of a preliminary investigation and how it should be conducted if it is to conform with the paramount requirements of due process. In that case we ruled:

"The purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the state from useless and expensive trials. (*Trocio v. Manta*, 118 SCRA 241; citing *Hashim v. Boncan*, 71 Phil. 216). The right to a preliminary investigation is a statutory grant, and to withhold it would be to transgress constitutional due process. (See *People v. Oandasan*, 25 SCRA 277) However, in order to satisfy the due process clause it is not enough that the preliminary investigation is conducted in the sense of making sure that a transgressor shall not escape with impunity. A preliminary investigation serves not only the purposes of the State. More important, it is a part of the guarantees of freedom and fair play which are birthrights of all who live in our country, it is, therefore, imperative upon the fiscal or the judge as the case may be, to relieve the accused from the pain of going through a trial once it is ascertained that the evidence is insufficient to sustain a prima facie case or that no probable cause exists to form a sufficient belief as to the guilt of the accused. Although there is no general formula or fixed rule for the determination of probable cause since the same must be decided in the light of the conditions obtaining in given situations and its existence depends to a large degree upon the finding or opinion of the judge conducting the examination, such a finding should not disregard the facts before the judge nor run counter to the clear dictates of reasons (See *La Chemise Lacoste, S.A. v. Fernandez*, 129 SCRA 391). The judge or fiscal, therefore, should not go on with the prosecution in the hope that some credible evidence might later turn up during trial for this would be a flagrant violation of a basic right which the courts are created to uphold xxx"

Similar caution is warranted for the issuance of warrants of arrest. In the case at bar and especially considering the background circumstances which led to the filing of charges, we find it highly improbable for the judge to be able to determine the existence of reasonable grounds to believe that the offenses have been committed and that each and everyone of the seventy-six (76) persons are probably guilty thereof in a matter of a few hours and to proceed with the issuance of the warrants of arrest also on the same day. It should be remembered and the judge should have taken into account that all the offenses which were allegedly committed were only the product and result of

the outburst of the feelings and emotions of the people of Baras due to the highly tense situation in the municipality, which culminated with the May 14, 1982 incident. The judge, therefore, in conducting his preliminary investigation should have ascertained with double care if, indeed, there was ample evidence to warrant the issuance of arrest warrants and eventually the filing of criminal informations against such a big number of persons, most of whom were impelled by different motivations and whose respective participations were of varying natures and degrees. One of the crimes charged was sedition, a particularly grave offense not to be lightly treated by any prosecuting officer or judge. The possibility of prolonged detention because of the charge should have been considered.

In view of the above considerations and, as suggested by the Solicitor-General in his manifestation made during the hearing on these petitions, embodied in our resolution dated May 29, 1984, the warrants of arrest issued by the Municipal Trial Court of Teresa, Rizal are recalled and the matter is referred to the Provincial Fiscal of Rizal who is directed to determine whether or not the preliminary examinations should be continued and, thereafter, to make a ruling on the results of any examination.

WHEREFORE, in G.R. No. 60504, the petition for habeas corpus is hereby GRANTED. The penalty for contempt of the Commission on Elections is declared fully satisfied; the petitioner's bail on his own recognizance is CANCELLED; and he is restored to his liberty.

In G.R. No. 60591, the petition is GRANTED in part. The resolution of the Commission on Elections proclaiming Bayani A. Ferrera duly elected mayor of Baras, Rizal is SET ASIDE. A permanent vacancy having arisen in the Office of Mayor, the vice-mayor shall assume the office after taking his oath and qualifying.

In G.R. Nos. 60732-39, the petition is GRANTED in part. The warrants of arrest issued by the Municipal Trial Court of Teresa, Rizal are RECALLED as null and void. The Provincial Fiscal of Rizal is ORDERED to determine whether or not the preliminary examinations should be continued and, thereafter, to take the appropriate action on the matter, according to the tenor of this decision.

SO ORDERED.

Abad Santos, Melencio-Herrera, Plana, Escolin, Relova, De la Fuente, Cuevas, and Alampay, JJ., concur.

Makasiar, J., I reserve my vote.

Aquino, J., took no part.

Fernando, C.J. and Concepcion, Jr., J., on leave.¹ :

CONCURRING

TEEHANKEE, Acting C.J., :

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,[1] 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." [2] It would also disregard the unbroken line of jurisprudence which is the law of the land since the 1912 case of Topacio vs. Paredes [3] 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" [4] 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" [5] 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." [6] 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. [7]

The Court's judgment directing the duly elected vice mayor to assume the office of mayor in view of the failure of election for said office rightfully prevents a terrible affront against the electorate in Baras, Rizal by preventing the transformation of the repudiated loser into a winner against their express will and mandate.

[1] Sandalo vs. Comelec, G.R. No. 52737. Aug. 31, 1981

[2] 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 . . ."

[3] 23 Phil. 238(1912).

[4] Luison vs. Garcia. 103 Phil. 457 (1958). "[I]",

[5] Vilar vs. Paraiso. 96 Phil. 664 (1955).

[6] Uamaso vs. Ferrer. 84 Phil. 490 (1949). . :

[7] Baddies vs. Cabile. 27 SCRA 121.

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