

**CESAR NEPOMUCENO, LEON ARCILLAS AND RUBEN AVENIDO,
PETITIONERS, VS. THE HON. COMMISSION ON ELECTIONS AND
OSCAR LASERNA, RESPONDENTS.***G.R. No. 60601, December 29, 1983*

Ponente: ESCOLIN, J.

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This is the third time that petitioners have come to this Court to challenge the actuations of the respondent Commission on Elections in PDC Case No. 65, entitled "Oscar Laserna, Petitioner, versus Cesar Nepomuceno, et al., Respondents."

Petitioners Cesar Nepomuceno, Leon Arcillas and Ruben Avenido were the official candidates of the Nacionalista Party in the 1980 local elections for the positions of mayor, vice-mayor and member of the Sangguniang Bayan, respectively, of Sta. Rosa, Laguna. On January 14, 1980, private respondent Oscar Laserna filed a petition before the COMELEC, docketed as PDC Case No. 65, to disqualify petitioners on the ground of turncoatism. On January 25, 1980, the COMELEC issued Resolution No. 8484, granting said petition, thereby denying due course to petitioners' certificates of candidacy. Alleging denial of due process, petitioners assailed said resolution in a petition for certiorari and prohibition with prayer for a temporary restraining order filed with this Court on January 28, 1980 [G.R. Nos. 52427 and 52506]. We issued a restraining order enjoining the COMELEC from enforcing Resolution No. 8484, by reason whereof, petitioners were allowed to be voted for in the elections of January 30, 1980. It appears that in said elections, petitioners won and were proclaimed winners in their respective positions.

On May 15, 1980, We issued a Resolution in G.R. No. 52427 and G.R. No. 52506, setting aside the challenged resolution and remanding the cases to respondent COMELEC "for a full dress hearing in accordance with due process and to decide the cases as expeditiously as possible after giving the parties full opportunity to present all evidence relevant to the issue of alleged turncoatism."

The COMELEC accordingly set PDC Case No. 65 for hearing on the merits. However, on July 17, 1980, petitioners filed a motion to dismiss the said case, alleging that it being a pre-election case, the same should be dismissed, without prejudice to the filing of appropriate quo warranto proceedings pursuant to Section 189 of the 1978 Election Code. Having obtained an unfavorable ruling from the COMELEC, petitioners filed another petition with this Court, docketed as G.R. No. 54633, assailing the COMELEC's resolution which denied their motion to dismiss. On December 22, 1980, We dismissed this second petition, as follows:

"x x x there is no legal basis for the allegation in the instant petition that this Court 'meant' by said resolution that its reference therein to 'due process - is the filing of the proper petition in accordance with Section 189 and 190 of the 1978 Election Code' and that the disqualification Case PDC No. 65 in the Comelec has become functus officio after the election, proclamation and assumption to office of petitioners herein, the Court resolved to DISMISS the petition. Had this Court intended to convert the pre-proclamation proceedings in PDC Case No. 65 into either a protest or a quo warranto, the resolution would have been so worded and the

case would not have been remanded to the COMELEC which has no jurisdiction, as correctly pointed out by petitioners, over such protest or quo warranto, which belongs to the jurisdiction of the Courts of First Instance. Of course, the resolution is without prejudice to petitioners choosing, if they prefer to expedite proceedings, to abandon the pre-proclamation contest and instead proceed directly to the proper Court of First Instance with a protest or quo warranto, as may be proper."

Likewise, denying the motion for reconsideration of the above Resolution on June 8, 1982, We said:

"G.R. No. 54633 [Cesar Nepomuceno, et al., vs. Commission on Elections, et al.]. - Acting on the motion filed by petitioners for reconsideration of the resolution of this Court of December 22, 1980, the Court resolved to DENY the same for lack of merit. With the clarification made in said resolution, it is now the law of the case as to the parties herein that PDC Case No. 65 pending in the Comelec is a pre-proclamation proceeding. However, the Court did not deem it wise to issue any order disturbing the continuance in office of petitioners precisely because they are entitled to due process in the disqualification case PDC No. 65. This denial is final.
x x x"

Thereafter, the Comelec proceeded to hear PDC Case No. 65, with petitioners' manifestation that "they do not waive their right to question the jurisdiction of the Comelec" having been placed on record. After respondent Oscar Laserna had terminated the presentation of his evidence, petitioners filed their respective Motions to Dismiss/Demurrer to Evidence, which were seasonably opposed by respondent Laserna. Rejoinders and memoranda were filed by the parties, and on March 31, 1982, the Comelec issued the following order denying the demurrer to evidence, to wit:

"RESPONDENTS BY COUNSEL individually filed demurrers to the evidence, to which the petitioner did not lose time to oppose. It is uniformly maintained by said respondents that the evidence already adduced by the petitioner does not establish a good cause to proceed against them, for which reason the petition as against them should be dismissed. Petitioner disagreed, arguing otherwise.

"The demurrers should be DENIED. The Commission [Second Division] would rather have the complete facts and evidence of the parties upon which to reach a decision than prematurely go into it now upon the facts and evidence of the petitioner only. The rationale behind such a procedure is to enable this Body to properly adjudicate the case on its merits and to ventilate the adversary issues on the basis of all the facts and evidence presented by the contending parties. [See *Siayngco v. Costobolo*, No. L-22506, Feb. 28, 1982] [Annex "L", Rollo, p. 89]

Petitioners' motions for reconsideration of the above order were likewise denied.

On April 15, 1982, petitioners filed with the Comelec another Motion to Dismiss, which was denied in an order dated April 16, 1982. This order was signed for the division by presiding commissioner Luis L. Lardizabal [Annex "T", Rollo, p. 126]. From these orders, petitioners came to Us, alleging:

1. THAT THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO AN ACT IN EXCESS OF OR WITHOUT JURISDICTION IN REFUSING TO RESOLVE PETITIONERS' DEMURRER TO EVIDENCE BY WAY OF A JUDGMENT WHEREIN IT SHOULD STATE THE FACTS AND THE LAW ON WHICH ITS RESOLUTION IS BASED.
2. THAT THE RESPONDENT COMMITTED GRAVE, ABUSE OF DISCRETION, AMOUNTING TO LACK OF JURISDICTION, IN DENYING PETITIONERS' MOTION TO DISMISS.
3. THAT THE RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OF JURISDICTION, IN PROMULGATING THE RESOLUTION OF APRIL 16, 1982 THROUGH THE ACT OF ONLY ONE MEMBER OF A DIVISION.

Petitioners are obviously misled by the title of Rule 35 of the Rules of Court, "Judgment on Demurrer to Evidence." Said Rule, consisting of only one section, allows the defendant to move for dismissal of the case after the plaintiff has presented his evidence on the ground of insufficiency of evidence, and provides for the effects of the dismissal or non-dismissal, as the case may be, on the right of the defendant to present his cause. Otherwise stated, it authorizes a judgment on the merits of the case without the defendant having to submit evidence on his part as he would ordinarily have to do, if it is shown by plaintiff's evidence that the latter is not entitled to the relief sought. The demurrer, therefore, is an aid or instrument for the expeditious termination of an action, similar to a motion to dismiss, which the court or tribunal may either grant or deny.

It is thus apparent that the requirement of Section 1 of Rule 36[1] would only apply if the demurrer is granted, for in this event, there would in fact be an adjudication on the merits of the case, leaving nothing more to be done, except perhaps to interpose an appeal. However, a denial of the demurrer is not a final judgment, but merely interlocutory in character as it does not finally dispose of the case, the defendant having yet the right to present his evidence, as provided for under Section 1 of Rule 35.

In *Estrada vs. Sto. Domingo*,[2] We have ruled that "x x x Section 12, Article VIII, Constitution and Section 1, Rule 36, Rules of Court, which require express findings of fact in a decision, have no application to the questioned Order. Here involved is not a decision on the merits but a mere order upon a motion to reconsider. The judge could simply dish out a routine capsule-form order 'Denied for lack of merit' or 'motion for reconsideration denied.' And yet, that kind of order would serve to immunize the judge against an unlawful neglect-of-duty charge. x x x"

The challenged order being merely an interlocutory order and not a final judgment or decision, no abuse of discretion was committed by respondent Comelec in its failure to state the facts and the law on which its order denying petitioners' demurrer to evidence is based.

The second issue raised by petitioners hardly deserves serious consideration. It had long been laid to rest in our Resolutions in G.R. No. 54633, and considering the number of times petitioners have succeeded in suspending the proceedings before the COMELEC, their insistence on raising said issue over and over again is an obvious dilatory tactic intended to frustrate this Court's directive to respondent COMELEC to have the case heard and terminated as expeditiously as possible.

Neither is there merit in petitioners' third contention that the order of April 16, 1982 signed for the division by Presiding Commissioner Luis Lardizabal violated Sec. 3, Art. XII c of the Constitution, which provides:

"SECTION 3. The Commission on Elections may sit en banc or in three divisions. All election cases may be heard and decided by divisions, except contests involving Members of the National Assembly, which shall be heard and decided en banc. Unless otherwise provided by law, all election cases shall be decided within ninety days from the date of their submission for decision."

As aptly observed by the Solicitor General in his Comment,

"It is plain that this provision refers to a decision on the merits of the case, where the contending causes of the parties are decided with finality, one way or the other. The fallacy of petitioners' contention is obvious. Their argument proceeds from the erroneous premise that the April 16, 1982 resolution is a decision on the merits. Clearly, the said resolution is merely interlocutory, and being such, the Presiding Commissioner of the Division is competent to sign said resolution alone (Resolution No. 9805 dated June 18, 1980 of the Comelec).

WHEREFORE, the petition is hereby denied. Costs against petitioners.

SO ORDERED.

Aquino, Concepcion, Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Relova, and Gutierrez, Jr., JJ., concur.

Fernando, C.J., and Makasiar, JJ., no part.

Teehankee, J., dissents in a separate opinion.

[1] Section 1, Rule 36 provides:

"Rendition of judgments. - All judgments determining the merits of cases shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him and filed with the clerk of the court."

[2] 28 SCRA 890.

Nepomuceno vs COMELEC : 60601 : December 29, 1983 : J. Teehankee : En Banc : Dissenting Opinion Normal
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Dissenting OPINION

TEEHANKEE, J.:

I dissent from the majority's judgment which, four years after the holding of the 1980 local elections, would still allow the pre-proclamation petition to disqualify petitioners (on grounds of alleged turncoatism filed by a mere voter) as the duly elected and proclaimed mayor, vice mayor and Sangguniang Bayan member of Sta. Rosa, Laguna. I reiterate the grounds and considerations therefor as stated in my separate opinions in G.R. Nos. 52427 and 52506 dated May 15, 1980 and in G.R. No. 54633 dated December 22, 1980 which are hereby reproduced by reference in the interest of brevity.

Suffice it to reproduce, however, what I had stressed in my above-cited separate opinion of May 15, 1980, viz: "(I) reiterate my stand that all such pre-election cases seeking to disqualify the winner simply on the ground of alleged turncoatism should be ordered dismissed after the last January 30th elections, subject to the filing of an appropriate quo warranto action or election protest against the winner in the appropriate forum."

In my separate dissenting opinion in the second case of December 22, 1980, I had pointed out that "(I)ndeed, it would be a legal anomaly if at this late stage, almost a year after the January 30, 1980 elections [it is actually now 4 years after the elections], the Comelec would be still dealing with the cases at bar as if they were a pre-proclamation contest when petitioners had already been duly proclaimed and had duly assumed their respective offices by virtue of the Comelec's very Resolution (No. 9258) of February 23, 1980, which lifted the previous suspension of the effects of their proclamation. These effects and realities can no longer be challenged or undone in a pre-proclamation controversy (which has long become moot and functus officio by the Comelec's own action of February 23, 1980) but in the proper election protest or quo warranto action before the court of first instance."

Finally, it should be pointed out that the principle invoked by me has been reaffirmed by the Court in a continuous host of cases, mostly penned by the Chief Justice, the latest of which was issued on this very same month in G.R. No. 57219-20, entitled "Ramon B. Resurreccion et al. vs. Comelec, et al.", wherein the Court once more reaffirmed that "this petition falls squarely within the authoritative Sande Aguinaldo doctrine.[1] As therein set forth: 'Since *Venezuela v. Commission on Elections*, this Court has invariably adhered to the principle 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. Where, however, such constitutional provision had been seasonably invoked prior to that date with the Commission on Elections having acted on it and the matter then elevated to this Court before such election, the issue thus presented should be resolved.'[2] Since its promulgation on January 5, 1981, such a principle was followed subsequently in the following cases: *Laguda v. Commission on Elections*;^[3] *Agcaoili, Jr. v. Santos*;^[4] *Mitmug v. Commission on Elections*;^[5] *Jagunap v. Commission on Elections*;^[6] *Mogueis, Jr. v. Commission on Elections*;^[7] *Faderanga v. Commission on Elections*;^[8] *Pasion v. Commission on Elections*;^[9] *Mangca v. Commission on Elections*;^[10] *Disini v. Commission on Elections*;^[11] and *Robes v. Commission on Elections*."^[12]

As I had stated in my separate opinion in *Singco v. Comelec*^[13], only "(I)n this wise (would) this Court's dockets be cleared of all such pending pre-proclamation or post-election cases seeking to disqualify the winners or to prevent or annul their proclamation (even at this late stage, 10 months after the holding of the elections!),^[14] in line with the President's own view as reported in the February 27, 1980 newspapers whereby he 'ordered the lawyers of the KBL [Kilusang Bagong Lipunan] to withdraw all disqualification charges to allow already proclaimed opposition candidates involved in such cases to assume office, reserving the right to file an election protest' (although such Presidential orders seem to have been ignored since I am not aware of any disqualification case before us that has been so withdrawn)."

[1] G.R. No. 53953, Jan. 5, 1981, 102 SCRA 1.

[2] *Ibid*, 3.

[3] G.R. No. 53747, Feb. 20, 1981, 102 SCRA 857.

[4] G.R. No. 52791, Feb. 26, 1981, 103 SCRA 350.

[5] G.R. No. 54082, Mar. 24, 1981, 103 SCRA 455.

[6] G.R. Nos. 53062 & 53345, Apr. 24, 1981, 104 SCRA 204.

[7] G.R. No. 53376, May 26, 1981, 104 SCRA 476.

[8] G.R. No. 55938, June 26, 1981, 105 SCRA 123.

[9] G.R. No. 54151, Nov. 16, 1981, 109 SCRA 238.

[10] G.R. Nos. 58309-10, Feb. 25, 1982, 112 SCRA 273.

[11] G.R. Nos. 52502, Dec. 30, 1982, 119 SCRA 511.

[12] G.R. No. 63130, June 28, 1983, 123 SCRA 193.

[13] G.R. No. 52830, prom. Nov. 28, 1980.

[14] It should be noted that 4 years have already elapsed now since the local elections of January 30, 1980!

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