

**ISIDRO MILLARE, PETITIONER, VS. HON. LEOPOLDO B. GIRONELLA,
JUDGE OF THE COURT OF FIRST INSTANCE OF ABRA, HON. ADRIANO
BERNARDINO, ACTING MUNICIPAL CIRCUIT JUDGE OF TAYUM,
ABRA,...**

G.R. No. 61586. May 30, 1983

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

Petitioner Isidro Millare ran for the position of Barangay Captain of Barangay Budac, Tayum, Abra, against private respondent Alfredo Elveña during the barangay election held on May 17, 1982. On May 10, 1982, Elveña filed in the Municipal Circuit Court of Tayum, Abra, a petition for the exclusion and disqualification of Millare, docketed as Barangay Election Case No. 48. The said petition sought to strike out Millare's name from the voters' list, and to disqualify him as a candidate for the position of barangay captain of barangay Budac on the ground that he was not an actual resident of the said barangay for at least six months prior to the elections, as required by Section 7 of Batas Pambansa Blg. 222. At the hearing of the said petition, Millare failed to appear and, after receiving the evidence of Elveña, the respondent Municipal Circuit Judge of Tayum, Judge Adriano Bernardino, issued an order striking out Millare's name from the voters' list and declaring him disqualified to run as barangay captain of barangay Budac.

On May 14, 1982, Millare filed a motion for a reconsideration of the said order. The motion was set for hearing, and in an order dated May 16, 1982, Judge Bernardino denied the same, with the modification that Millare's name was allowed to remain in the voters' list. Millare received a copy of the order denying his motion for reconsideration at 3:00 o'clock in the afternoon of May 16, 1982, which was a Sunday, the eve of election day.

Despite the declaration as to his disqualification, Millare ran just the same in the election held on May 17, 1982. It appears undisputed that he garnered more votes than Elveña. His votes, however, were not considered by the barangay board of tellers, they having been declared as stray. The barangay board of canvassers proclaimed Elveña as the duly elected Barangay Captain of barangay Budac. He took his oath of office as such.

Millare did not appeal the orders in Election Case No. 48 which declared him disqualified to run as barangay captain of barangay Budac. On May 20, 1982, Millare filed with the respondent Municipal Circuit Court Election Protest No. 49 against Elveña, praying for the annulment of the proclamation of Elveña and for a declaration that he (Millare) was the duly elected Barangay Captain of barangay Budac. At the hearing of said election protest, Millare asked that the ballot boxes be reopened so as to show to the court that he got more votes than Elveña. This prayer was denied. When placed on the witness stand, Millare was not allowed to testify on the ground that he had already been disqualified as a candidate. In his order dated June 22, 1982, Judge Bernardino dismissed the election protest for lack of merit. He reasoned out that the election protest may not be availed of as a means of appealing the decision dated May 16, 1982 in Election Case No. 48 which declared Millare as disqualified as a candidate and which had already become final and executory, there having been no appeal taken from the same.

Millare appealed the order of dismissal of Election Protest No. 49 to the Court of First Instance of Tayum, wherein it was docketed as Special Civil Case No. 1687 "For Review on Certiorari on questions of Law." The then court of first instance, through public respondent Judge Leopoldo B. Gironella, rendered a decision dated July 29, 1982 affirming the decision of the Municipal Circuit Court in Election Protest No. 49.

On August 16, 1982, Millare filed the instant petition which he entitled as a "Petition for Review on Certiorari on Questions of Law." He prays principally that the aforementioned decision and orders of the respondents Judge Gironella and Judge Bernardino be nullified, and that Election Protest No. 49 be remanded to the Municipal Circuit Court of Tayum for trial on the merits. The petition was given due course and the parties have filed their respective memoranda.

The respondents are pinning down Millare on his failure to appeal the order of Judge Bernardino in Election Case No. 48 declaring him disqualified to run for the position of barangay captain of barangay Budac on the ground of non-residence. Such failure, it was reasoned out, resulted in the said order becoming final and executory, and that by virtue thereof, Millare lacked the requisite personality to file Election Protest No. 49. It was for this reason that Judge Bernardino denied his motion to re-open the ballot boxes for a recanvassing of the contents of the same, and also his attempt to testify in the said proceeding.

From a strict legal standpoint, the view that the order disqualifying Millare had become final and executory due to his failure to appeal the same may be said to be technically correct. The law governing barangay elections is contained in Batas Pambansa Blg. 222, otherwise known as the Barangay Election Act of 1982. Section 21 of the said law provides that "the provisions of the 1978 Election Code and the Revised Barangay Chapter not inconsistent herewith shall be applicable in a suppletory character to the election of barrio officials." Section 8 of the Revised Barangay Chapter, Republic Act No. 3590, as amended and as adopted by Presidential Decree No. 557, provides in its last paragraph as follows:

"All disputes over barangay elections shall be brought before the municipal court of the municipality concerned; and in the determination and decision thereof, the court shall follow as closely as possible the procedure prescribed for inferior courts in Rule 4 (now Rule 5), Rules of Court. The decision of the municipal court shall be appealable pursuant to the Rules of Court to the Court of First Instance whose decision shall be final on questions of fact." (last par., Sec. 8, R.A. No. 3590, as amended.)

The above-quoted provision deals with "all disputes over barangay elections." It apparently includes proceedings to disqualify a candidate, there being no other provision expressly applicable to such cases, unlike in the case of actions for exclusion or inclusion in the voters' lists which are explicitly provided for in the first paragraph of Section 20 of Batas Pambansa Blg. 222 and in Sections 93 to 96 of the 1978 Election Code. The pertinent provisions of the Rules of Court which have been made applicable to "all disputes over barangay elections" require that the decision of a municipal court be appealed to the Court of First Instance (now the Regional Trial Court) "within fifteen days after notification of the judgment complained of." (Sec. 2, Rule 40, Rules of Court.) It is a fact that Millare did not take an appeal from the orders issued by Judge Bernardino in Election Case No. 48.

However, We find Ourselves unable to go along with the stoically legalistic stance taken by the respondents which not only disregards the equities involved, but also contravenes the unquestioned policy in the interpretation of election laws and the disposition of election cases. We have repeatedly ruled that "the purpose of election laws is to give effect to rather than frustrate, the will of the voters." (*Canceran vs. COMELEC*, 107 Phil. 607; *Silverio vs. Castro*, 19 SCRA 520; *Cauton vs. COMELEC*, 19 SCRA 912; *Pacis vs. COMELEC*, 25 SCRA 377.)

Under the undisputed facts, Millare could not have appealed the order disqualifying him as a candidate before the election. The order denying his motion for reconsideration of the order dated May 13, 1982 in Election Case No.

48 was received by Millare only at 3:00 o'clock in the afternoon of May 16, 1982, a Sunday, or only a few hours before the opening of the polling places.

However, as to whether Millare should have appealed the said order of disqualification after election day, more particularly when his votes, which were more than those of his opponents, were not credited to him, they having been considered stray due to the aforementioned disqualification, was not plain nor certain enough as the proper course of action to take. The barangay board of tellers had considered the order of his disqualification as already final and executory, for which reason they considered his votes stray. If the order of disqualification was still appealable, as contended by the respondents, such action on the part of the barangay board of tellers was legally unjustified and erroneous. The quandary in the mind of Millare as to what course of action to take after Elveña was proclaimed the winner despite his having received less votes than Millare was not helped any by the state of the law and of the applicable decisions on the matter. As aforesaid, there is no express legal provision or pertinent jurisprudence which indicates whether, under such a situation, Millare should have appealed the order of his disqualification, or file an election protest. Existing provisions seemingly indicate that the appropriate step to take is to file an election contest. The second paragraph of Section 20 of Batas Pambansa Blg. 222 provides as follows:

"A sworn petition contesting the election of any barangay official shall be filed with the city or municipal or metropolitan trial court, as the case may be, within ten days from the date of the proclamation of the winners. The trial court shall decide the election protest within fifteen days after the filing thereof. The decision of the municipal or city or metropolitan trial court may be appealed within ten days from receipt of a copy thereof to the Regional Trial Court (CFI) which shall decide within thirty days from submission, and whose decision shall be final."

Section 191 of the 1978 Election Code, in turn, prescribes the following:

"A sworn petition contesting the election of a barangay officer shall be filed with the proper city or municipal court by any candidate for the same office who has duly filed a certificate of candidacy, within ten days after the proclamation of the election."

In the last paragraph of Section 196 of the same Code, We find the following:

"....."

The decision of the city, municipal or municipal district courts in the case stated in Section 191 hereof shall not be appealable and shall immediately be final and executory."

The choice between appealing the order of disqualification in Election Case No. 48 and filing an election contest after the election had been held was thus not easy to make. Or, having made such a decision, may one be certain as to the correctness of the same. In several cases brought before the Supreme Court, a disqualification proceeding based on the so-called "turn-coatism" filed after the election were ordered dismissed, the proper remedy having been held to be an election contest or a quo warranto proceeding. If filed before the election, the dismissal of such a case after the proclamation of the winner became the subject of conflicting views. (*Desini v. COMELEC*, G.R. No. 52502, Dec. 30, 1982; *Venezuela vs. COMELEC*, 98 SCRA 790; *Aguinaldo vs. COMELEC*, 102 SCRA 1; *Singco v. COMELEC*, 101 SCRA 420; *Faderanga vs. COMELEC*, 105 SCRA 124.) Reliance on the doctrine laid upon in said cases is even impaired by the fact that not one of them involved the election of barangay officials which is governed by different provisions of law.

The propriety of Millare's filing a separate election contest in lieu of appealing the order of disqualification in Election Case No. 48 could have been induced also by the need to raise issues in the election contest other than the sole question of the alleged non-residence of Millare in Barangay Budac; such as, the denial of due process consisting in the lack of opportunity to present evidence in his behalf, the propriety of declaring the votes cast in

his favor as stray, and the refusal of Judge Bernardino to allow the reopening of the ballot boxes for a recanvassing of the votes. At any rate, if appeal is indeed the proper remedy, the filing of Election Protest No. 49 on May 20, 1982, or well within the period of appeal, may be considered as in the same nature of that remedy. Whatever procedural misstep may have been committed in this regard may not override the paramount consideration of upholding the sovereign will of the people expressed through the democratic process of suffrage. Millare may not be faulted for sleeping on his rights. He had insisted on his qualification for the position he ran for, and took determined and seasonable steps to assert the same.

We accordingly find merit in the petitioner's complaint against the actions of the public respondents. The issue of the petitioner's non-residence in Barangay Budac upon which his disqualification was predicated in the decisions and orders complained of had never been ventilated at all, it having been buried and lost sight of in a maze of technicalities. Millare was never afforded the chance to prove that he was an actual resident of Barangay Budac (where, according to him, he has been residing for the last twenty years in a big house of strong materials) for at least six months prior to the elections, and as such qualified to run for the position of Barangay Captain thereof. The least that he is entitled to is to be given that chance, if only to give satisfaction to those who voted for him.

WHEREFORE, the petition is hereby GRANTED. The orders of Judge Bernardino in Election Case No. 48 and Election Protest No. 49 and the decision of Judge Gironella in Special Civil Case No. 1687 are hereby ANNULLED and SET ASIDE. Election Contest No. 48 should be deemed consolidated with Election Protest No. 49 which are hereby ordered remanded to the Municipal Circuit Trial Court of Tayum, Abra, for further proceedings. The two cases shall be tried together, and the said court is ordered to allow the petitioner to present evidence in his behalf, to grant his motion for a reopening of the ballot boxes and for the recanvassing of their contents and, after trial, to render judgment thereon as the evidence and the law may warrant. Private respondent Alfredo Elveña shall pay the costs.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana and Gutierrez, Jr., JJ., concur.
Relova, J., on leave.

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