

ROQUE FLORES, PETITIONER, VS. COMMISSION ON ELECTIONS, NOBELITO RAPISORA, RESPONDENTS.

G.R. No. 89604. April 20, 1990

Ponente: CRUZ, J.

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CRUZ, J.:

Petitioner Roque Flores was proclaimed by the board of canvassers as having received the highest number of votes for kagawad in the elections held on 28 March 1989, in Barangay Poblacion, Tayum, Abra, and thus became punong barangay in accordance with Section 5 of Rep. Act No. 6679, providing in part as follows:

Sec. 5. There shall be a sangguniang barangay in every duly constituted barangay which shall be the legislative body and shall be composed of seven (7) kagawads to be elected by the registered voters of the barangay. The candidate who obtains the highest number of votes shall be the punong barangay x x x.

However, his election was protested by Nobelito Rapisora, herein private respondent who placed second in the election with 463 votes, or one vote less than the petitioner. The Municipal Circuit Trial Court of Tayum, Abra, sustained Rapisora and installed him as punong barangay in place of the petitioner after deducting two votes as stray from the latter's total.[1]

Flores appealed to the Regional Trial Court of Abra, which affirmed the challenged decision in toto. Judge Francisco O. Villarta, Jr. agreed that the four votes cast for "Flores" only, without any distinguishing first name or initial, should all have been considered invalid instead of being divided equally between the petitioner and Anastacio Flores, another candidate for kagawad. The judge held that the original total credited to the petitioner was correctly reduced by 2, to 462, demoting him to second place.[2]

The petitioner then went to the Commission on Elections, but his appeal was dismissed on the ground that the public respondent had no power to review the decision of the regional trial court. This ruling, embodied in its resolution dated 3 August 1989,[3] was presumably based on Section 9 of Rep. Act No. 6679, which was quoted therein in full as follows:

Sec. 9. A sworn petition contesting the election of a barangay official may be filed with the proper municipal or metropolitan trial court by any candidate who has duly filed a certificate of candidacy and has been voted for a barangay office within ten (10) days after the proclamation of the result of the election. The trial court shall decide the election protest within thirty (30) days after the filing thereof. The decision of the municipal or metropolitan trial court may be appealed within ten (10) days from receipt of a copy thereof by the aggrieved party to the regional trial court which shall decide the issue within thirty (30) days from receipt of the appeal and whose decision on questions of fact shall be final and non-appealable. For purposes of the barangay elections, no pre-proclamation cases shall be allowed.

In this petition for certiorari, the Commission on Elections is faulted for not taking cognizance of the petitioner's appeal and for not ruling that all the four questioned votes should have been credited to him under the equity-of-the-incumbent rule in Section 211(2) of the Omnibus Election Code.

The Commission on Elections was obviously of the opinion that it could not entertain the petitioner's appeal because of the provision in Rep. Act No. 6679 that the decision of the regional trial court in a protest appealed to it from the municipal trial court in barangay elections "on questions of fact shall be final and non-appealable."

While supporting the dismissal of the appeal, the Solicitor General justifies this action on an entirely different and more significant ground, to wit, Article IX-C, Section 2(2) of the Constitution, providing that the Commission on Elections shall:

(2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction. (Emphasis supplied.)

Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable.

His submission is that municipal or metropolitan courts being courts of limited jurisdiction, their decisions in barangay election contests are subject to the exclusive appellate jurisdiction of the Commission on Elections under the afore-quoted section. Hence, the decision rendered by the Municipal Circuit Trial Court of Tayum, Abra, should have been appealed directly to the Commission on Elections and not to the Regional Trial Court of Abra.

It is recalled that in the case of *Luison v. Garcia*,^[4] respondent Garcia's certificate of candidacy was declared invalid by the Commission on Elections for non-compliance with the statutory requirements. What he did was appeal to the court of first instance, which held that the certificate was merely defective but not altogether null and void. Garcia continued his candidacy on the strength of this ruling and was subsequently proclaimed elected, thereafter assuming office as municipal mayor.

In sustaining the quo warranto petition filed against him by Luison, this Court declared that all the votes cast for Garcia should have been rejected as stray because he did not have a valid certificate of candidacy. The action of the Commission on Elections should have been appealed not to the court of first instance but to the Supreme Court as required by the 1935 Constitution. Since this was not done, the resolution of the Commission on Elections rejecting Garcia's certificate remained valid on the date of the election and rendered all votes cast for him as stray.

The doctrine in that case, although laid down under the 1935 Constitution, is still controlling under the present charter as the interpretation by this Court of Article IX-C, Section 2(2). Accordingly, Section 9 of Rep. Act No. 6679, insofar as it provides that the decision of the municipal or metropolitan court in a barangay election case should be appealed to the regional trial court, must be declared unconstitutional.

We make this declaration even if the law has not been squarely and properly challenged by the petitioner. Ordinarily, the Court requires compliance with the requisites of a judicial inquiry into a constitutional question.^[5] In the case at bar, however, we feel there is no point in waiting to resolve the issue now already before us until it is raised anew, probably only in the next barangay elections. The time to resolve it is now before such elections. We shall therefore disregard the technical obstacles in the case at bar so that the flaw in Rep. Act No. 6679 may be brought to the attention of Congress and the constitutional defect in Section 9 may be corrected.

In taking this step, the Court does not disregard the fact that the petitioner was only acting in accordance with the said law when he appealed the decision of the Municipal Circuit Trial Court of Tayum to the Regional Trial Court of Abra. That is what the statute specifically directed in its Section 9 which, at the time the appeal was made, was

considered constitutional. The petitioner had a right to rely on its presumed validity as everyone apparently did. Even the Congress and the Executive were satisfied that the measure was constitutional when they separately approved it after careful study. Indeed, no challenge to its validity had been lodged or even hinted - not even by the public respondent - as to suggest to the petitioner that he was following the wrong procedure. In fairness to him, therefore, we shall consider his appeal to the Commission on Elections as having been made directly from the Municipal Circuit Trial Court of Tayum, Abra, disregarding the detour to the Regional Trial Court.

Accordingly, we hold that the petitioner's appeal was validly made to the Commission on Elections under its "exclusive appellate jurisdiction over all contests x x x involving elective barangay officials decided by trial courts of limited jurisdiction." Its decision was in turn also properly elevated to us pursuant to Article IX-A, Section 7, of the Constitution, stating that "unless otherwise provided by this Constitution or by law, any decision, order or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof."

Obviously, the provision of Article IX-C, Section 2(2) of the Constitution that "decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable" applies only to questions of fact and not of law. That provision was not intended to divest the Supreme Court of its authority to resolve questions of law as inherent in the judicial power conferred upon it by the Constitution.[6] We eschew a literal reading of that provision that would contradict such authority.

The issue the petitioner was raising was one of law, viz., whether he was entitled to the benefits of the equity-of-the-incumbent rule and so subject to our review. This issue was not resolved by the public respondent because it apparently believed itself to be without appellate jurisdiction over the decision of the Regional Trial Court of Abra. Considering that the public respondent has already manifested its position on this issue, as will appear presently, the Court will now rule upon it directly instead of adopting the round-about way of remanding the case to the Commission on Elections before its decision is elevated to this Court.

Implementing Rep. Act No. 6679, the Commission on Elections promulgated Resolution No. 2022-A providing in Section 16(3) thereof that:

Incumbent Barangay Captains, whether elected, appointed or designated shall be deemed resigned as such upon the filing of their certificates of candidacy for the office of "Kagawad," which is another office, for the March 28, 1989 barangay election.

This was the reason why the Municipal Circuit Trial Court of Tayum, Abra, held that the four questioned votes cast for Flores could not be credited to either Roque Flores or Anastacio Flores and should have been regarded as stray under Section 211(1)[7] of the Omnibus Election Code. Rejecting the petitioner's claim, the court held that Roque Flores was not entitled to any of the four contested votes because he was not incumbent as punong barangay (or barangay captain, as the office was formerly called) on the date of the election.

The petitioner insists on the application to him of Section 211(2) of the Code, stating pertinently that:

2. x x x If there are two or more candidates with the same full name, first name or surname and one of them is the incumbent, and on the ballot is written only such full name, first name or surname, the vote shall be counted in favor of the incumbent.

because he should not have been considered resigned but continued to be entitled to the office of punong barangay under Section 8 of Rep. Act No. 6679, providing as follows:

Sec. 8. Incumbent elective officials running for the same office shall not be considered resigned upon the filing of their certificates of candidacy. They shall continue to hold office until their successors shall have been elected and

qualified.

The petitioner contends that the afore-quoted administrative regulation is inofficious because the forfeiture prescribed is not authorized by the statute itself and beyond the intentions of the legislature. Moreover, the enforcement of the rule would lead to discrimination against the punong barangay and in favor of the other kagawads, who, unlike him, could remain in office while running for re-election and, additionally, benefit from the equity-of-the-incumbent rule.

Alternatively, the petitioner argues that, assuming the regulation to be valid, he was nonetheless basically also a kagawad as he was a member of the sangguniang barangay like the other six councilmen elected with him in 1982. In fact, Section 5 of the Rep. Act No. 6679 also speaks of seven kagawads, the foremost of whom shall again be the punong barangay. He concludes that he should thus be regarded as running for the same office - and therefore not considered resigned - when he filed his certificate of candidacy for kagawad.

The Court does not agree.

It seems to us that the challenged resolution quite clearly expresses the mandate of the above-quoted Section 8 that all incumbent elected officials should not be considered resigned upon the filing of their certificates of candidacy as long as they were running for the same position. The purpose of the resolution was merely to implement this intention, which was clearly applicable not only to the ordinary members of the sangguniang barangay but also to the punong barangay.

As for the questioned authority, this is found in Section 52 of the Omnibus Election Code, which empowers the public respondent to "promulgate rules and regulations implementing the provisions of this Code or other laws which the Commission is required to enforce and administer x x x."

The justification given by the resolution is that the position of punong barangay is different from that of kagawad - as in fact it is. There should be no question that the punong barangay is an essentially executive officer, as the enumeration of his functions in Section 88 of the Local Government Code will readily show, unlike the kagawad, who is vested with mainly legislative functions (although he does assist the punong barangay in the administration of the barangay). Under Rep. Act No. 6679, the person who wins the highest number of votes as a kagawad becomes by operation of law the punong barangay, or the executive of the political unit. In the particular case of the petitioner, it should be noted that he was in fact not even elected in 1982 as one of the six councilmen but separately as the barangay captain. He was thus correctly deemed resigned upon his filing of a certificate of candidacy for kagawad in 1989, as this was not the position he was holding, or was incumbent in, at the time he filed such certificate.

It is worth stressing that under the original procedure followed in the 1982 barangay elections, the petitioner was elected barangay captain directly by the voters, separately from the candidates running for mere membership in the sangguniang barangay. The offices of the barangay captain and councilmen were both open to the candidates, but they could run only for one or the other position and not simultaneously for both. By contrast, the candidate under the present law may aspire for both offices, but can run only for one, to wit, that of kagawad. While campaigning for this position, he may hope and actually strive to win the highest number of votes as this would automatically make him the punong barangay. In this sense, it may be said that he is a candidate for both offices. Strictly speaking, however, the only office for which he may run - and for which a certificate of candidacy may be admitted - is that of kagawad.

It follows that the petitioner cannot insist that he was running not for kagawad only but ultimately also for punong barangay in the 28 March 1989 election. In fact, his certificate of candidacy was for kagawad and not for punong

barangay. As the basic position being disputed in the barangay election was that of kagawad, that of punong barangay being conferred only by operation of law on the candidate placing first, the petitioner had to forfeit his position of punong barangay, which he was holding when he presented his candidacy for kagawad. Consequently, he cannot be credited with the four contested votes for "Flores" on the erroneous ground that he was still incumbent as punong barangay on the day of the election.

The petitioner argues that he could not have run for re-election as punong barangay because the office was no longer subject to separate or even direct election by the voters. That may be so, but this argument goes to the wisdom of the law, not its validity, and is better addressed to the legislature. From the strictly legal viewpoint, the statute does not offend the equal protection clause, as there are, to repeat, substantial distinctions between the offices of punong barangay and kagawad. Precisely, the reason for divesting the punong barangay of his position was to place him on the same footing as the other candidates by removing the advantages he would enjoy if he were to continue as punong barangay while running for kagawad.

In sum, we hold that Section 9 of Rep. Act No. 6679 is constitutionally defective and must be struck down, but the challenged resolution must be sustained as a reasonable and valid implementation of the said statute. The petitioner was no longer the incumbent punong barangay on election day and so was not entitled to the benefits of the equity-of-the-incumbent rule. The consequence is that the four votes claimed by him were correctly considered stray, making the private respondent the punong barangay of Poblacion, Tayum, Abra, for having received the highest number of votes for kagawad.

It remains to stress that although the elections involved herein pertain to the lowest level of our political organization, this fact has not deterred the highest tribunal from taking cognizance of this case and discussing it at length in this opinion. This only goes to show that as long as a constitutional issue is at stake, even the barangay and its officers, for all their humility in the political hierarchy, deserve and will get the full attention of this Court.

WHEREFORE, the petition is DISMISSED. Judgment is hereby rendered:

1. Declaring Section 9 of Rep. Act No. 6679 UNCONSTITUTIONAL insofar as it provides that barangay election contests decided by the municipal or metropolitan trial court shall be appealable to the regional trial court;
2. Declaring valid Section 16(3) of Com. Res. No. 2022-A dated January 5, 1989; and
3. Declaring private respondent Nobelito Rapisora the duly elected punong barangay of Poblacion Tayum, Abra.

No pronouncement as to costs.

SO ORDERED.

Narvasa, Melencio-Herrera, Gutierrez Jr., Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.
Fernan, C.J., on leave.

[1] Rollo, p. 17.

[2] Annex "A-1," Ibid., pp. 17-19.

[3] Annex "A," Id., pp. 14-16.

[4] G.R. No. L-10916. May 20, 1957.

[5] (a) There must be an actual case or controversy; (b) The question of constitutionality must be raised by the proper party; (c) The constitutional question must be raised at the earliest possible opportunity; and (d) The decision of the constitutional question must be necessary to the determination of the case itself.

[6] *Leongson v. CA*, 49 SCRA 212; *Scott v. Inciong*, 68 SCRA 473; *Medalla v. Sayo*, 103 SCRA 587.

[7] Where only the first name of a candidate or only his surname is written, the vote for such candidate is valid if there is no other candidate with the same first name or surname for the same office.

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