

JESUS A. RAMOS, PETITIONER, VS. HONORABLE COURT OF FIRST INSTANCE OF ZAMBOANGA DEL NORTE, BRANCH I, THRU ITS HONORABLE PRESIDING JUDGE AND ROSARIO G. BERNARDO, RESPONDENTS.*G.R. Nos. 55245-46. December 19, 1984*

Ponente: FERNANDO, C.J.

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It is quite understandable why a suit for certiorari and mandamus with a statement of facts in 33 paragraphs, did require a detailed Answer.[1] It is undisputed that petitioner Jesus A. Ramos was the candidate declared elected, thereafter proclaimed by the municipal board of canvassers, and is now holding office as mayor of Manukan, Zamboanga del Norte. Respondent Rosario G. Bernardo was the opposing candidate who ran against him. There was in reality no need for the parties to have gone into such inordinate length for the relevant facts are likewise undisputed.

As noted, petitioner Ramos, after being proclaimed, assumed his office, and has since continually discharged its functions.[2] Respondent Bernardo has not, however, given up. As a matter of fact, on the date of petitioner's proclamation, February 1, 1980, as early as 7:30 A.M., prior to the announcement by the board of canvassers of the result, she filed with Branch III of the then Court of First Instance of Zamboanga del Norte a "Petition to hold in abeyance the proclamation of Petitioner Ramos and to recount the tampered ballots in Precinct No. 52"; it was docketed as an election protest.[3] That same morning at 10:30 respondent Bernardo filed a Supplemental and Amended pleading, adding two more precincts for the board of canvassers to recount the votes, with petitioner in turn and the board of canvassers included in such pleadings filing an answer.[4] On February 5, petitioner filed such answer to the original petition as well as the amended and supplemental pleading of respondent.[5] According to petitioner, "he interposed [therein] a counter protest as an alternative remedy." [6] Then on February 7, respondent filed an "Amended Petition" to the original petition of February 1, 1980 to hold in abeyance such proclamation, wherein she prayed for the annulment of the proclamation of the petitioner.[7] Respondent in her Answer admitted that such amended petition prayed for the annulment of the proclamation of the petitioner, but that if the proclamation were upheld, such amended petition be considered a protest, as expressly denominated in its caption "Election Protest No. 80-5." [8] It was admitted by petitioner that he filed on February 9, an "Answer to Amended Petition" wherein he stated that such Amended Petition was admitted the day it was filed "thereby foreclosing [his] opportunity for a hearing and to object to the same" and that it be considered as a Counter-protest as an "alternative remedy." [9] While admitting the filing by petitioner in the lower court of his "Answer to Amended Petition," respondent Bernardo reiterated in her answer "that on the admission, acceptance and docketing of the said amended petition, which is an independent election protest, petitioner is not entitled to a hearing whatsoever, and no hearing is necessary." [10]

She likewise mentioned that in such "Answer to Amended Petition," it was likewise characterized as a Counter Protest, petitioner failing to invoke his alleged right to a hearing with the result that he is in estoppel "to claim that

he has a right to be heard." [11]

With the relevant facts as thus clarified, it becomes obvious why the petition must fail. The plea to annul all the proceedings had before the lower court and the prayer for the dismissal of the election case cannot be granted.

1. The dismissal of the case before the lower court is premised on the contention that it is not an election contest. For petitioner, it remains a pre-proclamation controversy. The proceedings thus far conducted, so he argues, were mere incidents of the "Petition to hold in abeyance the proclamation of Petitioner Ramos and to recount the tampered ballots in Precinct No. 52," filed on the very day of the proclamation, February 1, 1980, and of the "Amended Petition," filed on February 7, 1980, wherein she prayed for the annulment of the proclamation of petitioner but, if upheld, to consider such pleading an "Election Protest," as expressly captioned. [12] For petitioner, therefore, there is as yet no election protest. That is reliance on sheer technicality. That is to stress form and to disregard the substance. The lack of persuasive force in such a contention becomes even more obvious when, as noted, he referred to his two responsive pleadings to the two above petitions as counter-protests.

2. Such line of argument if accepted could ostensibly serve another purpose. It could lend a semblance of plausibility to a claim that there was a failure to follow the provision on election protest. According to the Election Code: "A sworn petition contesting the election of a municipal or municipal district officer shall be filed with the proper Court of First Instance by any candidate for the same office who has duly filed a certificate of candidacy, within ten days after the proclamation of the election." [13] Apparently petitioner is of the impression that literal compliance is necessary. Failure to do so would give rise to a jurisdictional question. That is not, however, the authoritative doctrine. This Court in the exercise of its equity jurisdiction and in line with the basic objective of the people's will being truly ascertained has so ruled.

3. The latest case in point, *De Leon v. Lindo* [14] reiterates such an authoritative doctrine. Thus: "It was the existence of problems, a number of them novel in character, that arose after the elections for local government in 1980, that led to the exercise by this Court of its equitable powers. Accordingly, in appropriate cases, an objection raised on purely legal grounds based on the strict letter of the law was not deemed controlling. What is undeniable is that ever since *Venezuela v. Commission on Elections*, decided on July 25, 1980, this Court has allowed the losing party a reasonable period usually ten days within which to file an election protest. That solution appears to be the most just and fair under the circumstances. It is a further assurance that the wishes of the electorate would not be disregarded by what would amount to a definitive bar on determining who was the real people's choice. In *Venezuela*, as well as in *Agcaoili v. Santos and Commission on Elections*, and in *Disini v. Commission on Elections*, a period of ten days was the one granted. In *Faderanga v. Commission on Elections*, a fifteen-day period was granted the losing party. In sustaining respondent Commission on Elections in the April decision of this Court, between petitioner *de Leon* and private respondent *Lindo*, it was made clear in the opening paragraph of the opinion citing *Venezuela* – the doctrine being given a more explicit form in *Aguinaldo v. Commission on Elections* -- that it is a 'generally accepted principle that a pre-proclamation controversy should be laid to rest [at a certain stage] there being the remedy of a protest or a quo warranto proceeding that could be utilized.' The election protest actually having been filed and having been acted upon by respondent Judge, it would not be in consonance with equity if at this stage it would not be allowed to continue. All things considered, justice, another name for equity, would best be served by allowing the lower court, acting through the successor of respondent Judge, to continue hearing such protest until its final disposition." [15] As far back as *Moya v. Del Fierro*, [16] a 1939 decision, Justice Laurel as ponente, after noting that republicanism pointing "to the enfranchised citizen as a partake of popular sovereignty," stressed that he "has a voice in his Government and whenever possible it is the solemn duty of the judiciary, when called upon to act in justiciable cases, to give it efficacy and not to stifle or frustrate it." [17] Thus is the constitutional right of suffrage vitalized. [18]

4. There is no merit to the contention that there was a denial of procedural due process. The claim is that petitioner was not heard on his objection to the admission of the amended petition to nullify the proclamation of petitioner, with the caption stating that if not warranted, it be considered a protest. All that the law requires is that such an election contest be filed.[19] Whatever objections that may be raised can be heard when the case is scheduled for trial. From the very petition itself, it appears that the case was calendared thirty-eight times from May 28, 1980 to September 16, 1980.[20] Petitioner, therefore, had all the opportunity to press his claim that what was being heard was merely a pre-proclamation controversy not a protest. That is all that procedural due process requires. It does not mean that he must be sustained. Moreover, even if he had reiterated it time and time again, it would have been an exercise in futility. To repeat, respondent did make clear in her amended petition that it be considered a protest if the proclamation of petitioner could not be nullified. Again, as shown earlier, the responsive pleadings of petitioner himself are captioned counter-protests. Since due process stands for fair play, it cannot be said that it was either unjust or unfair for the lower court to proceed with the hearing of the election protest.

WHEREFORE, the petition is dismissed for lack of merit. The restraining order issued is hereby lifted. The Regional Trial Court of Zamboanga del Norte to which the cases formerly assigned to the Court of First Instance of Zamboanga, Branch I, is hereby ordered to proceed forthwith with the trial of the election protest until it is decided. This decision is immediately executory. No costs.

Teehankee, Makasiar, Aquino, Concepcion, Jr., Abad Santos, Melencio-Herrera, Plana, Escolin, Relova, Gutierrez, Jr., De la Fuente, and Cuevas, JJ., concur.

[1] In 27 paragraphs, the Answer denied specifically the allegation and without qualification the conclusion setting forth the nature of the action; the fact that respondent Rosario G. Bernardo is a "defeated candidate", an alleged lack of authority of the clerk of court of respondent court as to the docket-number placed in a pleading, and other allegations and conclusions of a legal character. It denied a number of allegations specifically with averments of a contrary nature or statements as to "the truth of the matter." It admitted but again with qualification other allegations. As to the rest, it disclaimed knowledge or information, thus rendering respondent unable to form a belief as to the truth of such allegations.

[2] Petition, pars. 3 and 4. In the Answer, pars. 3 and 4, there was an admission of his having been duly proclaimed on such date and his having assumed office but a denial of his having been duly elected.

[3] Petition, pars. 5 and 6. The Answer, par. 5, denied that respondent Bernardo was the defeated candidate and in par. 6 admitted that respondent filed a petition to hold in abeyance the proclamation of petitioner and to recount what were alleged to be tampered ballots in a certain precinct.

[4] Cf. Petition, pars. 7 and 8. These allegations are admitted in the Answer in par. 7.

[5] Petition, par. 9. This allegation was admitted in par. 7 of the Answer.

[6] Petition, par. 10. In the Answer, this was admitted in par. 7.

[7] Petition, pars. 11 to 13.

[8] Answer, par. 9.

[9] Petition, par. 19.

[10] Answer, par. 16.

[11] Ibid.

[12] This is the reason for the first pleading being 80-5 and the second 80-7.

[13] Section 190, The Election Code (1978).

[14] G.R. No. 53914, promulgated September 30, 1984.

[15] Ibid, 3-4. Venezuela, G.R. No. 53532, July 25, 1980 is reported in 98 SCRA 790; Agcaoili, G.R. No. 52791, Feb. 26, 1981 in 103 SCRA 350; Disini, No. 52502, Dec. 30, 1982 in 119 SCRA 511; Faderanga, G.R. No. 55938, June 26, 1981 in 105 SCRA 123; Aguinaldo, G.R. No. 53953, Jan. 5, 1981 in 102 SCRA 1.

[16] 69 Phil. 199.

[17] Ibid, 204.

[18] Cf. Article VI, Section 1.

[19] Cf. Section 190, The Election Code (1978).

[20] Petition, par. 23.

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