

**RAMON B. RESURRECCION AND FEDERICO A. POBLETE,
PETITIONERS, VS. COMMISSION ON ELECTIONS, FELICISIMO A.
BAUTISTA, AND RENATO BAY, RESPONDENTS.**

G.R. Nos. 57219-20. January 04, 1984

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

The very recital in the petition renders clear why this suit for certiorari against respondent Commission on Elections is doomed to fail. In the elections for municipal officials of Kawit, Cavite on January 30, 1980, petitioners Ramon B. Resurreccion and Federico A. Poblete were the official KBL candidates for Mayor and Vice-Mayor, while respondents Felicisimo A. Bautista and Renato Bay were the official candidates of the Nacionalista Party for such positions.[1] Petitioners, on January 31, 1980, were proclaimed by the Municipal Board of Canvassers of Kawit, Cavite as the duly elected Mayor and Vice-Mayor.[2] Four days after said proclamation, on February 4, 1980, the private respondent filed an Urgent Petition ex parte with respondent Commission to order "the board of canvassers for the Municipality of Kawit, Cavite, to suspend the, proclama-tion of the winning candidates in Kawit", Cavite, on the following grounds: '(1) Vote buying as indicated in the attached evidence marked Annex A and made integral part hereof; '(2) Dead persons appears to have voted as indicated in evidence marked Annex B, hereto attached and made integral part hereof; '(3) Minors were allowed to vote as indicated in evidence hereto attached and marked Annex C and made integral part hereof; '(4) Flying voters voted twice in various voting centers; '(5) Terrorisms committed by persons appearing to be agents of persons in authority; '(6) And many other more violations of the Revised Election Code and related laws." [3] Respondent Commission, on February 5, 1980, denied such Urgent Petition as "the allegations contained in the petition are grounds proper for an election protest." [4] Private respondents, on February 6, 1980, then filed an ex-parte Petition with respondent Commission "for the same allegations and evidence already submitted to [it] in a petition entitled: 'Petition for the Suspension of Proclamation of the Kawit, Cavite Elective Officials, and docketed as Special Proceedings No. 181." [5] That was followed by the issuance of respondent Commission of Resolution No. 9074 stating that since "the grounds alleged in both petitions [being] proper in an election protest, the Commission, on proper motion, duly seconded, RESOLVED to deny the same, with notice to all parties concerned." Petitioners moreover alleged that they were not notified thereof. [6] On March 31, 1980, respondent Commission, issued Resolution No. 9614, worded thus: "Acting on the Supplemental Motion for Reconsideration, Motion in Ex-Abundantia Cautela and Motion for Early Resolution of Pending Incident filed by Petitioners Bautista and Bay, the Commission, considering that the grounds alleged are the same grounds previously relied upon in original petitions and which were denied in Resolution Nos. 8990 and 9074 dated February 5 and 12, 1980, respectively, as they are grounds for an election protest, RESOLVED, as it hereby resolves, to deny the foregoing motions of herein petitioner but without prejudice to investigating the allegations for possible cri-minal prosecution and to rule that the commencement of the period within which to file the election protest shall begin the from the issuance of this resolution." [7] By virtue of the above resolution, private respondents, on April 10, 1980, filed with the then Court of First Instance of Cavite, Election cases Nos. N-10-80

and N-11-80, against petitioners Resurreccion and Poblete.[8]Alleging that they were not previously notified of the previous actuations, petitioners upon receipt of the summons in said election cases, examined the records in the office of respondent Commission.[9] Subsequently, on April 21, 1980, petitioners filed an urgent motion for reconsideration of the portion of Resolution No. 9614 allowing the filing of the protest which for them was violative of Section 175 of the 1978 Election Code.[10] It was followed on May 9, 1980, with their Amended Urgent Motion alleging, as additional ground for reconsideration of Resolution No. 9614, that said respondent "committed grave abuse of discretion and/or acted without jurisdiction" in issuing said Resolution without due notice and hearing" to them.[11] In an Order dated June 2, 1981, respondent Commission denied the Urgent Motion for Reconsideration.[12]

On July 2, 1981, this Court issued a resolution requiring respondents, both public and private, to comment within ten (10) days from notice. Both parties submitted their respective comments, private respondents on July 21, 1981, and respondent Commission, after a plea on the part of the Solicitor General for extension, on August 5, 1981. Such comments were considered as answers and the case was submitted for decision. As set forth at the outset, the petition lacks merit.

1. As pointed out in the Comment of Solicitor General Estelito P. Mendoza,[13] it was incorrect for petitioners to conclude that there was an annulment of their proclamation as the Mayor-elect and Vice-Mayor-elect simply because the resolution of respondent Commission on March 31, 1980 stated that "the commencement of the period within which to file election protest shall begin from the issuance of this resolution." [14] In the language of such Comment: "There is nothing in the said resolution which suggests, even remotely, that their proclamation had been annulled. In giving private respondents a period of ten days from receipt of the resolution (Annex 'G', Petition) within which to file an election protest, the said resolution, in fact, assumes the validity of the proclamation of the petitioners to their respective offices." [15] Then came this portion: "Having ruled that the grounds alleged in the petition filed by private respondents are proper in an election protest, respondent COMELEC can validly give private respondent a period of ten days from receipt of the resolution denying the petition within which to file an election protest. Under the prevailing circumstances, the resolution of respondent COMELEC is but just and equitable for the matter placed in issue was the validity of the elections in Kawit, Cavite held on January 30, 1980 - a matter within the exclusive competence of the respondent COMELEC. It is within the COMELEC's power to determine whether there was, as alleged in the petition, indeed a failure of election, and having settled the issue, provide for the date when the 10-day period for a protest should begin. Equity demands that while respondent COMELEC was requiring into the validity of the allegations made by private respondents, viz-a-viz, the failure of elections, the period for filing on election protest should, in the meantime, be suspended. Thus, the ruling of respondent COMELEC giving private respondents a period of ten days from receipt of the resolution denying their petition to annul elections is warranted by the prevailing circumstances." [16] It could thus correctly conclude: "A reading of the petition shows that respondent COMELEC is being faulted, and its action characterized as, 'with abuse of discretion and without jurisdiction,' allegedly because petitioners' proclamations were 'annulled' without any notice and hearing and for reasons and/or grounds not enumerated in Sections 172, 173 and 174 of the Election Code. Thus, the main premise is not only erroneous but misleading for, to repeat, the petitioners' proclamations were not annulled." [17]

2. It is quite clear, therefore, that this petition falls squarely within the authoritative Sande Aguinaldo doctrine.[18] 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."^[19] Since its promulgation on January 5, 1981, such a principle was followed subsequently in the following cases: *Laguda v. Commission on Elections*;^[20] *Agcaoili, Jr. v. Santos*;^[21] *Mitmug v. Commission on Elections*;^[22] *Jagunap v. Commission on Elections*;^[23] *Mogueis, Jr. v. Commission on Elections*;^[24] *Faderanga v. Commission on Elections*;^[25] *Pasion Commission on Elections*;^[26] *Mangca v. Commission on Elections*;^[27] *Disini v. Commission on Elections*;^[28] and *Robes v. Commission on Elections*.^[29]

3. Nor may there be an valid objection to Resolution No. 9614 of respondent Commission on Elections dated March 31, 1980 stating "that the commencement of the period within which to file the election protest shall begin from the issuance [thereof]."^[30] Such a doctrine found expression in *Venezuela v. Commission on Elections*.^[31] In that case, while the petition was dismissed, petitioner was granted a period of ten days from receipt of the resolution to file before the proper court a quo warranto suit or an election protest.^[32] In four of the previously cited cases, *Agcaoili, Jr.*; *Jagunap*; and *Disini*, the same period of ten days from receipt of the resolution was granted. In *Faderanga*, a longer period - fifteen days to be exact - was allowed for filing the election protest.

4. The last issue to be resolved dealt with the allegation that there was a denial of procedural due process as petitioners were not informed of certain orders of the Commission issued after Resolution No. 9614. They became aware only when the election protest was filed in court. Such a fact does not suffice to justify a claim on due process ground. For such orders merely reiterated what was originally set forth in the first resolution, that of February 5, 1980. It denied an urgent petition dated February 4, 1980 of private respondents to set aside proclamation of petitioners to the contested positions of Mayor and Vice-Mayor of Kawit, Cavite, for precisely "the allegations contained in the petition are grounds proper for an election protest." In a decision rendered last month, *Pacificar v. Court of Appeals*,^[33] this Court reiterated the previous holding in *Florendo v. Florendo*^[34] to the effect that it would be an exercise in futility if a procedural due process issue would not result in a reversal of the action assailed even if sustained, no arbitrariness being shown. At any rate, as far back as February 5, 1980, petitioners had been fully informed that private respondents, if so minded, could institute an election protest. That they did. Petitioners have therefore no cause for complaint if the latter availed themselves of such a right within the period allowed by authoritative doctrines.

WHEREFORE, the petition for certiorari is dismissed.

Teehankee, Makasiar, Aquino, Concepcion, Jr., Guerrero, Abad Santos, De Castro, Plana, Escolin, Relova, and Gutierrez, Jr., JJ., concur.

Melencio-Herrera, J., no part.

[1] Petition, pars. 3 and 4.

[2] *Ibid*, par. 5.

[3] *Ibid*, par. 6.

[4] *Ibid*, par. 7.

[5] *Ibid*, par. 8.

[6] Ibid, par. 9.

[7] Ibid, par. 11.

[8] Ibid, par. 13.

[9] Ibid, par. 14.

[10] Section 175 of the 1978 Election Code reads as follows: "SEC. 175. Suspension and annulment of proclamation. - The Commission shall be the sole judge of all proclamation controversies and any of its decisions, orders or rulings shall be final and executory. It may, motu proprio upon written petition, and after due notice and hearing order the suspension of the proclamation of a candidate-elect or annul any proclamation, if one has been made, on any of the grounds mentioned in Sections 172, 173 and 174 hereof."

[11] Ibid, par. 16.

[12] Ibid, par. 17.

[13] He was assisted by Assistant Solicitor General Nathanael P. de Pano, Jr. and Solicitor Luisito P. Escutin.

[14] Petition, par. 11.

[15] Comment, 3-4.

[16] Ibid, 4-5.

[17] Ibid, 6.

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

[19] Ibid, 3.

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

[21] G.R. No. 52791, February 26, 1981, 103 SCRA 350.

[22] G.R. No. 54082, March 24, 1981, 103 SCRA 455.

[23] G.R. Nos. 53062 and 53345, April 24, 1981, 104 SCRA 204.

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

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

[26] G.R. No. 54151, November 16, 1981, 109 SCRA 238.

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

[28] G.R. No. 52502, December 30, 1982, 119 SCRA 511.

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

[30] Petition, par. 11.

[31] G.R. No. 53532, July 25, 1980, 98 SCRA 790. This is the first of the many cases relied upon in Sande Aguinaldo.

[32] Ibid, 794.

[33] G.R. No. 33277, November 25, 1983.

[34] L-24982, March 28, 1969, 27 SCRA 432.

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