Supreme Court E-Library

Reviewing the actuations of DBP during the first year of the dollar loan, we do not find that the timing and quantifications of the allocations it had made constituted abuse of its discretion.

WHEREFORE, the judgment under review, as well as the Decision of the then Court of First Instance of Rizal, Branch IX, Quezon City, in its Civil Case No. Q-18518, are hereby reversed and set aside. Costs against LA CAMPANA Food Products, Inc.

SO ORDERED.

Teehankee (Chairman), Plana, Gutierrez, Jr., De la Fuente, and *Patajo, JJ.*, concur.

Relova, J., on leave.

EN BANC

(G.R. No. 54718. December 4, 1985)

CRISOLOGO VILLANUEVA *Y* PAREDES, *petitioner, vs.* **COMMISSION ON ELECTIONS, MUNICIPAL BOARD OF CANVASSERS OF DOLORES QUEZON, VIVENCIO G. LIRIO,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ELECTION CODE OF 1978; UNSWORN WITHDRAWAL OF CERTIFICATE OF CANDIDACY SHOULD NOT BE USED TO FRUSTRATE PEOPLE'S WILL IN FAVOR OF SUBSTITUTE CANDIDATE.**— The fact that Mendoza's withdrawal was not sworn is but a technically which should not be used to frustrate the people's will in favor of petitioner as the substitute candidate. In *Guzman vs. Board of Canvassers*, 48 Phil. 211, clearly applicable, *mutatis*

Supreme Court E-Library

mutandis, this Court held that "(T)he will of the people cannot be frustrated by a technicality that the certificate of candidacy had not been properly sworn to. This legal provision is mandatory and non-compliance therewith before the election would be fatal to the status of the candidate before the electorate, but after the people have expressed their will, the result of the election cannot be defeated by the fact that the candidate has not sworn to his certificate or candidacy." (See also *Gundan vs. Court of First Instance,* 66 Phil. 125). As likewise ruled by this Court in *Canceran vs. Comelec,* 107 Phil. 607, the legal requirement that a withdrawal be under oath will be held to be merely *directory* and Mendoza's failure to observe the requirement should be "considered a harmless irregularity."

2. **ID.; ID.; ID.; COMELEC'S DENIAL OF A PARTY'S SUBSTITUTE CANDIDATE IN CASE AT BAR NOT IN CONSONANCE WITH THE SUBSTANCE AND SPIRIT OF THE LAW.**— The Comelec's post-election act of denying petitioner's substitute candidacy certainly does not seem to be in consonance with the substance and spirit of law. Section 28 of the 1978 Election Code provides for such substitute candidates in case of death, withdrawal or disqualification up to mid-day of the very day of the elections. Mendoza's withdrawal was filed on the last hour of the *last day* for regular filing of candidacies on January 4, 1980 which he had filed earlier that *same day.* For all intents and purposes, such withdrawal should therefore be considered as having been made substantially and in truth *after the last day,* even going by the *literal reading* of the provision by the Comelec. Indeed, the statement of former Chief Justice Enrique M. Fernando in his dissent that "the *bona fides* of petitioner Crisologo Villanueva *y* Paredes as a substitute candidate cannot, (in his opinion), he successfully assailed. It follows that the votes cast in his favor must counted. Such being the case, there is more than sufficient justification for his proclamation as Vice Mayor. x x x."

AQUINO, *C.J., dissenting*:

POLITICAL LAW; ELECTION OF 1978; VOTES CAST FOR A SUBSTITUTE CANDIDATE CONSIDERED STRAY.— Any votes cast for Villanueva who was not an official candidate because the Comelec did not approve his certificate of candidacy

Supreme Court E-Library

in substitution for Mendoza who withdraw his candidacy by means of an unsworn handwritten letter ware stray votes than Lirio, a re-electionist. It is dangerous to rely on the so-called spirit of the law which we cannot see nor handle and which we do not know very much.

RESOLUTION

TEEHANKEE, *J.*:

Upon consideration of petitioner's motion for reconsideration of the decision of May 3, 1983[1] (which dismissed his petition to set aside respondent Comelec's resolutions of February 21, 1980 and July 31, 1980 denying his petition for annulment of the proclamation of respondent Vivencio Lirio as the elected vice-mayor of Dolores, Quezon and for his proclamation instead as such elected vice-mayor for having received the clear majority of the votes cast), the comments of public and private respondents and petitioner's consolidated reply and manifestation and motion of June 25, 1985 (stating that respondent abandoned his claim to the office and accepted and assumed on June 10, 1985, the position of municipal trial judge of Lucban and Sampaloc, Quezon, as verified from the records of the Office of the Court Administrator), the Court Resolved to RECONSIDER and SET ASIDE its aforesaid decision and to GRANT the petition at bar.

The undisputed facts show that one Narciso Mendoza, Jr. had filed on January 4, 1980, the *last day* for filing of certificates of candidacy in the January 30, 1980 local elections, his sworn certificate of candidacy as independent for the office of vice-mayor of the municipality of Dolores, Quezon. But later on *the very same day*, Mendoza filed an unsworn letter in his own handwriting withdrawing his said certificate of candidacy "for personal reasons." Later on January 25, 1980, petitioner Crisologo Villanueva, upon learning of his companion Mendoza's withdrawal, filed his own sworn "Certificate of Candidacy in substitution" of Mendoza's for the said office of vice mayor as

[1] Reported in 122 SCRA 636.

Supreme Court E-Library

a one-man independent ticket. xxx The results showed petitioner to be the clear winner over respondent with a margin of 452 votes (3,112 votes as against his opponent respondent Lirio's 2,660 votes). But the Municipal Board of Canvassers disregarded all votes cast in favor of petitioner as stray votes on the basis of the Provincial Election Officer's erroneous opinion that since petitioner's name does not appear in the Comelec's certified list of candidates for that municipality, it could be presumed that his candidacy was not duly approved by the Comelec so that his votes could not be "legally counted." xxx The canvassers accordingly proclaimed respondent Vivencio G. Lirio as the only unopposed candidate and as the duly elected vice mayor of the municipality of Dolores.

Respondent Comelec issued its questioned resolution on February 21, 1980 denying the petition on two grounds after citing the pertinent legal provisions, as follows:

"The 1978 Election Code provides:

'SEC. 27. xxx *No* certificate of candidacy duly filed shall be considered withdrawn xxx unless the candidate files with the office which received the certificate xxx or with the Commission a sworn statement of withdrawal xxx"

'Sec. 28. xxx If, *after* the last day for filing certificates of candidacy, a candidate with a certificate of candidacy duly filed should xxx withdraw xxx any voter qualified for the office may file his certificate of candidacy for the office for which xxx the candidate who has withdrawn xxx was a candidate on or before mid/day of election xxx.'

"Clearly, Petitioner Villanueva could not have substituted for Candidate Mendoza on the strength of Section 28 of the 1978 Election Code which he invokes. For one thing, Mendoza's withdrawal of his certificate is not under oath, as *required* under Section 27 of the Code; hence it produces no legal effect. For another, said withdrawal was made *not after* the last day (January 4, 1980) for filing certificates of candidacy, as *contemplated* under Sec. 28 of the Code, but on *that very same day*." (Italics copied.)

Supreme Court E-Library

Upon a restudy of the case, the Court finds merit in the reconsideration prayed for, which would respect the will of the electorate instead of defeating the same through the invocation of formal or technical defects. (*De Guzman vs. Board of Canvassers*, 48 Phil. 211 [1925], citing *Lino Luna vs. Rodriguez*, 39 Phil. 208 [1918]; *Badelles vs. Cabili*, 27 SCRA 121 [1969]; Yra vs. Abaño, 52 Phil. 380 [1928]; *Canceran vs. Comelec*, 107 Phil. 607 [1960]; *Corocoro vs. Bascara*, 9 SCRA 522 [1963], *Pungutan vs. Abubakar*, 43 SCRA 11 [1972]; and *Lacson, Jr. vs. Posadas,* 72 SCRA 170 [1976]).

The Court holds that the Comelec's first ground for denying due course to petitioner's substitute certificate of candidacy, *i.e.* that Mendoza's withdrawal of his certificate of candidacy was not "under oath," should be rejected. It is not seriously contended by respondent nor by the Comelec that Mendoza's withdrawal was not an actual fact and a reality, so much so that no votes were cast for him at all. In fact, Mendoza's name, even though his candidacy was filed on the *last day within the deadline*, was not in the Comelec's certified list of candidates. His *unsworn withdrawal* filed later on the same day had been *accepted* by the election registrar without protest nor objection. On the other hand, since there was no time to include petitioner's name in the Comelec list of registered candidates, because the election was only four days away, petitioner as substitute candidate circularized formal notices of his candidacy to all chairmen and members of the citizens election committees in compliance with the suggestion of the Comelec Law Manager, Atty. Zoilo Gomez.

The fact that Mendoza's withdrawal was not sworn is but a technicality which should not be used to frustrate the people's will in favor of petitioner as the substitute candidate. In *Guzman vs. Board of Canvassers*, 48 Phil. 211, clearly applicable, *mutatis mutandis*, this Court held that "(T)he will of the people cannot be frustrated by a technicality that the certificate of candidacy had not been properly sworn to. This legal provision is mandatory and non-compliance therewith before the election would be fatal to the status of the candidate before the electorate, but after the people have expressed their will, the result of the election cannot be defeated by the fact that the candidate has not sworn

Supreme Court E-Library

to his certificate or candidacy." (See also *Gundan vs. Court of First Instance*, 66 Phil. 125). As likewise ruled by this Court in Canceran vs. Comelec, 107 Phil. 607, the legal requirement that a withdrawal be under oath will be held to be merely *directory* and Mendoza's failure to observe the requirement should be "considered a harmless irregularity."

As to the second ground, Mendoza's withdrawal of his certificate of candidacy right on the very same day that he filed his certificate of candidacy on January 4, 1980 which was the *very last day* for filing of certificates of candidacy shows that he was not serious about his certificate of candidacy. But this could not be done to would-be *bonafide* candidates, like petitioner who had not filed his candidacy in deference to Mendoza's candidacy who was one of his "co-planners" with "some concerned citizens ... (who) held causes to put up a slate that will run against the erstwhile unopposed KBL slate."

The Comelec's post-election act of denying petitioner's substitute candidacy certainly does not seem to be in consonance with the substance and spirit of the law. Section 28 of the 1978 Election Code provides for such substitute candidates in case of death, withdrawal or disqualification up to mid-day of the very day of the elections. Mendoza's withdrawal was filed on the last hour of the *last day* for regular filing of candidacies on January 4, 1980, which he had filed earlier *that same day*. For all intents and purposes, such withdrawal should therefore be considered as having been made substantially and in truth *after the last day*, even going by the *literal reading* of the provision by the Comelec. Indeed, the statement of former Chief Justice Enrique M. Fernando in his dissent that "the *bona fides* of petitioner Crisologo Villanueva *y* Paredes as a substitute candidate cannot, (in his opinion), be successfully assailed. It follows that the votes cast in his favor must be counted. Such being the case, there is more than sufficient justification for his proclamation as Vice Mayor. xxx"

ACCORDINGLY, the Court SETS ASIDE the questioned Resolutions of respondent Comelec and annuls the proclamation of respondent Lirio as elected vice-mayor of Dolores, Quezon and instead declares petitioner as the duly elected vice-mayor

Supreme Court E-Library

of said municipality and entitled forthwith to assume said office, take the oath of office and discharge its functions. This resolution is IMMEDIATELY EXECUTORY. **SO ORDERED**.

Concepcion Jr., Abad Santos, Plana, Escolin, Gutierrez, Jr., De la Fuente, Cuevas, Alampay, and *Patajo, JJ.*, concur.

Aquino, C.J., sse dissent.

Melencio-Herrera and *Relova, JJ.*, on leave.

AQUINO, *C. J., dissenting*:

Vivencio G. Lirio of the Kilusang Bagong Lipunan was the candidate for vice mayor of Dolores, Quezon Province in the election held on January 30, 1980.

The other candidate for vice mayor was Narciso L. Mendoza, Jr., who filed his certificate of candidacy on *January 4, 1980*, the last day for filing certificates of candidacy. But at 7:27 in the evening of that day, Mendoza withdrew his candidacy by means of a handwritten letter of withdrawal which was not under oath. He handed that letter to the election registrar of Dolores.

Five days before the election or on January 25, 1980, Crisologo Villanueva filed his certificate of candidacy for vice mayor in substitution for Mendoza. On January 26 the election registrar transmitted Villanueva's certificate of candidacy and Mendoza's withdrawal letter to the provincial election registrar who, in turn, indorsed the same to the Commission on Elections. These papers were received by the Comelec Law Department only on February 11, 1980 or after the election and after the proclamation of Lirio as the duly elected vice mayor.

Villanueva's name was not included in the official list of candidates. However, on the eve of the election or on January 29, he addressed a letter to all chairmen and members of the board of election inspectors of Dolores wherein he informed them of his candidacy in substitution for Mendoza. He requested them to count the votes cast in his favor.

Supreme Court E-Library

The municipal election registrar asked the provincial election registrar to clarify the status of Villanueva's candidacy. On election day, the provincial election registrar replied that since Villanueva's name was not included in the official list of candidates it could be legally presumed that the *Comelec did not approve his certificate of candidacy.*

On January 31, 1980 the municipal board of canvassers *proclaimed Lirio as the duly elected vice mayor.* The votes cast for Villanueva *were not counted* because he was not an official candidate. They were regarded as stray votes. *It cannot be assumed that he received 3,112 votes as against 2,600 votes for Lirio.*

Villanueva filed a petition to annul Lirio's proclamation. The Comelec *dismissed it* on the grounds (1) that Mendoza's withdrawal had no legal effect because it was not under oath as required in Section 27 of the Election Code and (2) that even assuming that it was effective, Villanueva's substitute candidacy was not valid under Section 28 of the Election Code since Mendoza did not withdraw *after January 4* but on that very day.

Any votes cast for Villanueva were stray votes under Section 155(15) of the Election Code. It cannot be said that Villanueva obtained more votes than Lirio, a reelectionist.

It is dangerous to rely on the so-called spirit of the law which we cannot see nor handle and which we do not know very much.

The Comelec resolution was affirmed by this Court. Villanueva filed a motion for reconsideration.

I vote to deny said motion.