Supreme Court E-Library

entering the eye would cause "corneal opacity" rather than lens injury or cataract development.

In other words, whether as a construction worker or not, petitioner would have developed "senile cataract," due to aging. The ailment is not labor connected.

Until "senile cataract" is included in the list of occupational diseases, I firmly believe that we should not substitute our judgment for that of respondent Commission, which acted within the purview of its jurisdiction.

EN BANC

[G.R. No. L-58309-10. February 25, 1982]

MANGACOP MANGCA, petitioner, *vs.* THE COMMISSION ON ELECTIONS and ALINADER DAGAR BALINDONG, respondents.

SYNOPSIS

After the local elections of January 30, 1980, in Sultan Gumander, Lanao del Sur, private respondent Balindong, the Nacionalista mayoralty candidate, filed PP Case No. 158 for the immediate counting of votes, canvass of election returns and proclamation of winning candidates; while petitioner Mangca, the KBL mayoralty candidate, filed PP Case No. 426 for the annulment of elections in said municipality. Subsequently, COMELEC Resolution No. 9520 was issued in PP Case No. 158 pursuant to which respondent Balindong was proclaimed as the duly elected mayor of Sultan Gumander after counting and canvass of votes. The effects of Resolution No. 9520 was, however, suspended when it was contested by the petitioner, but were thereafter revived by another resolution which also dismissed PP Case No. 426 on the grounds that the pre-proclamation controversy should no longer be viable after the proclamation of Balindong and the other winning candidates in Sultan Gumander and that the issue of whether or not there was a valid election in the municipality can best be ventilated in an election protest or *quo warranto.* Hence, this petition. Petitioner contended that the COMELEC resolution did not express clearly and distinctly the facts and the law on which it was based in violation of the existing Constitutional mandate and Rules of the COMELEC requiring the same; and that the COMELEC failed to resolve his claim that there was failure of election based on the report of the Regional Election Director.

Supreme Court E-Library

The Supreme Court upheld the validity of the assailed COMELEC resolution ruling that Section 9, Article X of the Constitution applies only to courts of justice which the COMELEC is not, while Section 26, Rule XV of COMELEC Resolution No. 1450 applies only to "election contests" and "*quo warranto* proceedings" which the pre-proclamation cases are not; and that the basis for petitioner's claim of failure of election has not been submitted in evidence, and even if submitted, the same is not proper in a pre-proclamation controversy.

Petition dismissed.

SYLLABUS

1. CONSTITUTIONAL LAW; COMMISSION ON ELECTIONS; SECTION 9, ARTICLE X OF THE CONSTITUTION AND SECTION 26, RULE XV OF COMELEC RESOLUTION NO. 1450, NOT APPLICABLE TO CASE AT BAR.— The contention that the March 31, 1981 resolution of the COMELEC is violative of Sec. 9, Art. X of the Constitution and Sec. 26, Rule XV of COMELEC Resolution No. 1450 because it did not express clearly and distinctly the facts and the law on which it is based is untenable. Firstly, both cited provisions are inapplicable to the case at bar since the constitutional requirement applies only to courts of justice which the COMELEC is not (Lucman *vs.* Dimaporo, L-31558, May 29, 1970, 33 SCRA 387), while COMELEC Resolution No. 1450, per Sec. 1 thereof, applies only to "election contests" and "*quo warranto* proceedings" which the pre-proclamation cases are not. Secondly, the questioned resolution has clearly and distinctly expressed the facts and law on which it is based. Finally, the questioned resolution need not express factual findings relative to the issue of whether or not there was failure of election since the COMELEC did not pass upon that issue and reserved resolution of the same in the election contest or *quo warranto* which the petitioner may thereafter file.

2. ID.; ID.; PRE-PROCLAMATION CONTROVERSY; FAILURE OF ELECTION, NOT PROPER ISSUE THEREIN.— The petitioner's contention that the COMELEC gravely abused its discretion when it did not resolve his claim that there was a failure of election in Sultan Gumander is untenable. In the first place, the report of Regional Election Director Mamasapunod Aguam that there was a failure of election in Sultan Gumander was not presented in evidence. In the second place, even if it had been presented the COMELEC had no duty to act on it considering that under the circumstances, the alleged failure of election was not a proper issue in a pre-proclamation case.

Supreme Court E-Library

3. ID.; ID.; ID.; NO LONGER VIABLE AFTER PROCLAMATION.— It was logical for the COMELEC to dismiss the pre-proclamation petition for annulment of the election, without prejudice to the filing of an election protest or *quo warranto,* whichever is proper, in the appropriate forum for ventilation, after the proclamation of Balindong and the other winning candidates in Sultan Gumander, because settled is the doctrine that once a proclamation has been made a pre-proclamation controversy is no longer viable.

APPEARANCES OF COUNSEL

Estanislao A. Fernandez & Omar B. Unspar for petitioner.
Esmeralda U. Guloy for private respondent.

DECISION

ABAD SANTOS, *J.*:

This petition for certiorari with preliminary injunction seeks to set aside: (1) COMELEC resolution dated March 31, 1981—which: (a) revived the effects of COMELEC Minute Resolution No. 9520 (thus allowing Alinader Dagar Balindong and all of those who were proclaimed on March 18, 1980, by the Municipal Board of Canvassers of Sultan Gumander, Lanao del Sur, as winners in the January 30, 1980, local elections to sit as officials of that municipality); (b) dismissed PP Case No. 426 without prejudice to the filing of an election protest or *quo warranto,* whichever is proper, in the appropriate forum for ventilation; and (c) declared said resolution as immediately executory—and (2) COMELEC resolution dated September 16, 1981, which denied for lack of merit the motion for reconsideration of the March 31, 1981, resolution.

After the January 30, 1980, local elections were held, Alinader Dagar Balindong, the private respondent, and Mangacop Mangca, the petitioner, who were the official candidates for mayor of Sultan Gumander, Lanao del Sur, filed pre-proclamation cases with the Commission on Elections. PP Case No. 158 for the immediate counting of votes, canvass of election returns and proclamation of winning candidates was filed by Alinader Dagar Balindong (NP) on February 4, 1980, while PP Case No. 426 for the annulment of elections in Sultan Gumander was filed by

Supreme Court E-Library

Mangacop Mangca (KBL) on February 13, 1980. On March 10, 1980, the COMELEC issued in PP Case No. 158 Resolution No. 9520 ordering the counting and canvassing of votes and the proclamation of the winning candidates. Pursuant thereto, the votes cast for Sultan Gumander were counted and canvassed and on March 18, 1980, the Municipal Board of Canvassers of Sultan Gumander proclaimed respondent Balindong, who obtained a plurality vote of 2,057, as Mayor-elect, and issued its certificate of canvass of the votes cast and proclamation of the winning candidates. The next day, Balindong took his oath of office before Acting Municipal Circuit Judge Guimba Anan Mandi.

Meantime, petitioner Mangca filed with the COMELEC on March 13, 1980, a motion for reconsideration of Resolution No. 9520 praying that the COMELEC suspend implementation of the resolution and the proclamation of winning candidates, declare a failure of elections in Sultan Gumander, and order a special election when peace and order conditions allow. He also prayed that PP Case No. 158 and PP Case No. 426 be heard jointly.

On March 26 1980, the COMELEC ordered the suspension of the effects of Resolution No. 9520.

On April 18, 1980, respondent Balindong filed a motion for reconsideration of the COMELEC order dated March 26, 1980, and on May 21, 1980, he filed a motion to intervene in PP Case No. 426 and an answer to the petition in said case. On May 22, 1980, the COMELEC issued a resolution admitting Balindong's intervention and answer and ordering an immediate raffle and hearing on the merits of the two cases.

On March 31, 1981, the Third Division of the Commission on Elections issued the contested resolution, the dispositive portion of which reads as follows:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, this Division resolves:

1. That the effects of COMELEC Minute Resolution No. (9520) be revived thus allowing Alinader Dagar Balindong and all of those who were proclaimed on March 18, 1980 as winners in the local elections in Sultan

Supreme Court E-Library

Gumander by the Municipal Board of Canvassers, headed by Atty. Zaman M. Marohomsar, to sit as municipal officials of Sultan Gumander;

2. That this decision shall be immediately executory pursuant to Sec. 175 of the Revised Election Code;

3. That PP Case No. 426 be dismissed without prejudice to the filing of an election protest or *quo warranto,* whichever is proper, in the appropriate forum for ventilation."

On April 27, 1981, petitioner Mangca filed a motion for reconsideration of the March 31, 1981, resolution claiming that the same did not express clearly and distinctly the facts and the law on which it is based and, therefore, null and void for being contrary to Art. X, Sec. 9 of the Constitution. He further contended that the COMELEC committed grave abuse of discretion amounting to lack of jurisdiction in failing to consider his evidence in PP. Case No. 426 and the report of Regional Election Director Mamasapunod Aguam that there was failure of election in Sultan Gumander and that a special election should be held therein.

On May 7, 1981, the COMELEC issued an order holding in abeyance the implemention of the March 31, 1981, decision and temporarily restraining Balindong from assuming the position of mayor of Sultan Gumander pending resolution of Mangca's motion for reconsideration.

On September 16, 1981, the COMELEC issued the other contested resolution denying Mangca's motion for reconsideration for lack of merit, lifting the May 7, 1981, restraining order, and ordering the immediate execution of the March 31, 1981, resolution. The COMELEC likewise emphasized that it did not pass upon the merits of PP Case No. 426 since the pre-proclamation controversy should no longer be viable after the proclamation of Balindong and the other winning candidates in Sultan Gumander and that the issue of whether or not there was a valid election in said municipality can best be ventilated in an election protest or *quo warranto*, whichever is proper.

Supreme Court E-Library

Hence, the present petition for certiorari with preliminary injunction.

The petitioner contends that the Commission on Elections gravely abused its discretion in issuing the resolution dated March 31, 1981, and September 16, 1981, on the following grounds:

(1) That the March 31, 1981, resolution did not express clearly and distinctly the facts and the law on which it is based—in violation of Sec. 9, Art. X of the Constitution, which reads:

"No decision shall be rendered by any court of record without expressing therein clearly and distinctly the facts and the law on which it is based."

and Sec. 26, Rule XV of COMELEC Resolution No. 1450 dated February 26, 1980, which reads:

"In deciding contests, the Commission shall follow the procedure prescribed for the Supreme Court in Secs. 8 and 9, Art. X of the Constitution of the Philippines."

(2) That the COMELEC did not consider petitioner's evidence, particularly the Memorandum-Report of Atty. Mamasapunod Aguam, Regional Election Director for Region XII, to the effect that there was failure of election in Sultan Gumander.

Petitioner's contention that the March 31, 1981, resolution is null and void for being violative of Sec. 9, Art. X of the Constitution and Sec. 26 Rule XV of COMELEC Resolution No. 1450 is untenable. Firstly, both cited provisions are inapplicable to the case at bar since the constitutional requirement applies only to courts of justice which the COMELEC is not (Lucman *vs.* Dimaporo, L-31558, May 29, 1970, 33 SCRA 387) while COMELEC Resolution No. 1450, per Sec. 1 thereof, applies only to "election contests" and "*quo warranto* proceedings" which the pre-proclamation cases are not. Secondly, the questioned resolution has clearly and distinctly expressed the facts and the law on which it is based. The factual basis of the dismissal of PP Case No. 426 is the proclamation of Balindong and the other winning candidates of Sultan Gumander on March 18, 1980; while the legal basis thereof is the settled judicial doctrine that once a proclamation has been held, a pre-proclamation case should

Supreme Court E-Library

no longer be viable. Finally, the questioned resolution need not express factual findings relative to the issue of whether or not there was failure of election in Sultan Gumander since the COMELEC did not pass upon said issue and reserved resolution of the same in the election contest or *quo warranto,* whichever is proper, which petitioner Mangca may thereafter file.

WE likewise hold as untenable the petitioner's contention that the COMELEC gravely abused its discretion when it did not resolve his claim that there was a failure of election in Sultan Guamander. In the first place, the report of Regional Election Director Mamasapunod Aguam that there was a failure of election in Sultan Gumander was not presented in evidence. In the second place, even if it had been presented the COMELEC had no duty to act on it considering that under the circumstances, the alleged failure of election was not a proper issue in a pre-proclamation case. It should be recalled that the COMELEC dismissed the pre-proclamation petition for annulment of the election (PP Case No. 426), without prejudice to the filing of an election protest or *quo warranto,* whichever is proper, in the appropriate forum for ventilation. The COMELEC's action is logical because settled is the doctrine that once a proclamation has been made, as in this case, a pre-proclamation controversy is no longer viable.

WHEREFORE, the petition for certiorari with preliminary injunction is hereby DISMISSED for lack of merit. Costs against the petitioners.

SO ORDERED.

Concepcion Jr., Fernandez, Guerrero, De Castro, Melencio-Herrera, Ericta, Plana and *Escolin, JJ.,* concur.

Fernando, C.J.: I concur on the basis of the ruling of this Court in Aguinaldo *v.* Commission on Elections, G.R. No. 53953, January 5, 1981.

Teehankee, J.: I concur. The 10-day period for petitioner to file any election protest (Sec. 190, 1978 Election Code) should be deemed to commence from petitioner's receipt of the decision upholding respondent's proclamation.

Supreme Court E-Library

Barredo, J.: I concur, but I note that Mangcacop Mangca's complaint was filed with the Comelec before the proclamation of Balindong, only that his ground is not proper for a pre-proclamation proceeding.

Makasiar, J., concurs in the result.

Aquino, J.: I concur but a 15-day period from notice should be fixed for the filing of the election protest or *quo warranto* proceeding.

FIRST DIVISION

[G.R. No. 58692. February 25, 1982]

MARINDUQUE MINING & INDUSTRIAL CORPORATION, petitioner, *vs.* HON. MINISTER OF LABOR AND EMPLOYMENT (BLAS F. OPLE), REGIONAL DIRECTOR OF REGIONAL OFFICE NO. 8, Tacloban City (CARMELO Y. YANUARIO) and PONCIANO DABUET, respondents.

SYNOPSIS

Petitioner corporation filed with the Regional Office of the Ministry of Labor and Employment (MOLE) a clearance application to dismiss private respondent on the grounds of habitual absenteeism and for being AWOL. A decision was rendered on September 22, 1977 ordering it to reinstate him with backwages at the rate of ₱14.25 a day from August 1, 1977 until the date of his actual reinstatement. Pending its appeal therefrom, a second clearance application was filed by petitioner corporation to terminate 460 employees, among them the private respondent, on the grounds of "serious reverses." On September 29, 1977, judgment was rendered granting the application which in due time became final and thereafter executed. On December 22, 1980, the Minister of Labor and Employment dismissed the appeal from the decision in the first clearance application. The Motion for Reconsideration was likewise denied, hence this present action.

The Solicitor General, in his Comment, contended that the final and executory order of September 29, 1977 in the second clearance application