

RENDER IT IMPOSSIBLE TO DISTINGUISH WHAT VOTES ARE LAWFUL AND WHAT ARE UNLAWFUL; IRREGULARITIES, SUFFICIENT TO WARRANT THE ANNULMENT OF AN ELECTION WHERE THE VOTE IS CLOSE, MAY BE DISREGARDED WHERE IT IS EVIDENT THAT THEY COULD HAVE HAD NO EFFECT UPON THE RESULT.

FACTS: Alfonso C. Faigal and Gil S. Dizon filed their respective certificates of candidacy for the office of municipal mayor of Guimba, Nueva Ecija, in the election held on November 13, 1951.

After the elections, Gil S. Dizon was proclaimed the elected mayor of said municipality, having received 3,386 votes against 2,875 votes cast in favor of his opponent Alfonso C. Faigal. In due time, Faigal filed an election protest on the ground of fraud and terrorism and prayed for the annulment of the results in 13 precincts.

From the evidence, it is clear (1) that two armed guards were assigned to each of the precincts involved to maintain peace and order; (2) that no acts of violence were committed in those precincts during the election; (3) that the killing of the persons mentioned were perpetuated before the election; (4) that no reports of fraud and terrorism were made to the representatives of the Commission on Elections.

HELD: Acts of terrorism and fraud to warrant the annulment of the election must be of such nature and magnitude as to render it impossible to distinguish what votes are lawful and what are unlawful.

The power to throw an entire election (and the same thing can be said with respect to the annulment of the election in several precincts of a municipality) should be exercised with the greatest care and only under circumstances which demonstrate beyond all reasonable doubt either that the disregard of the law has been so fundamental or so persistent and continuous that it is impossible to distinguish what votes are lawful and what are unlawful, or to arrive at any certain result whatever, or that the great body of the voters have been prevented by violence, intimidation and threats from exercising their franchise.

Elections should never be held void unless they are clearly illegal. It is the duty of the court to sustain an election authorized by law if it has been so conducted as to give a free and fair expression of the popular will, and the actual result thereof is clearly ascertained.

Irregularities, which may be sufficient to warrant the annulment of an election where the vote is close and when it is probable that the result of the election was affected by such irregularities, may be disregarded where it is evident that they could have had no effect upon the result. (*Alfonso C. Faigal, Protestant-Appellant, vs. Gil S. Dizon, Protestee-Appellee, (C.A.) G. R. No. 9896-R, promulgated July 15, 1953.*)

#### SECTION 5, REVISED ELECTION CODE

THE COMMISSION ON ELECTIONS HAS THE POWER TO ANNUL A FRAUDULENT REGISTRY LIST ALTHOUGH IT HAS BECOME PERMANENT; IT DOES NOT LOSE JURISDICTION OVER CONTROVERSIES BROUGHT BEFORE IT EVEN IF NOT DECIDED WITHIN FIFTEEN DAYS, AS SECTION 5 OF THE REVISED ELECTION CODE IS ONLY DIRECTORY.

FACTS: In November, 1951, respondent Arsenio Lugalay filed with the Commission on Elections a petition asking for the annulment of the registry list for the municipality of Concepcion, Tarlac, on the ground of fraud, intimidation, and terrorism. During the hearing of said petition, the question arose as to whether the Commission on Elections had the power to annul the registration in the municipality in question notwithstanding that the same had already become permanent in accordance with the provisions of Section 95 of the Revised Election Code, as amended. The Commission, by a majority vote, decided the same affirmatively.

The petitioner herein brought the case to the Supreme Court on certiorari, praying that the resolution of the Commission on Elections be set aside alleging that (a) said body no longer had jurisdiction to annul the registry list as the same had already become permanent and was only subject to corrections by proper petition, and (b) that section 5 of the Revised Election Code, as amended, providing that any controversy submitted to the Commission on Elections shall be tried, heard and decided by it within fifteen days, is mandatory, thus resulting in the Commission's loss of jurisdiction.

HELD: The Commission on Elections is authorized to annul

illegal registry lists of voters although said lists have become permanent<sup>1</sup> and a petition in the form of a letter filed in due time for the purpose of giving effect to the constitutional powers of the Commission is sufficient. The failure of the Commission to dispose of the proceeding for annulment within fifteen days, as required in section 5 of the Revised Election Code, does not result in the loss of its jurisdiction inasmuch as said provision must be considered merely as directory, in the same way that similar provisions for the disposition of election contests<sup>2</sup> were held directory.<sup>3</sup> More or less the same considerations control as regards the jurisdiction of the courts over election contests and the authority of the Commission on Elections over matters placed under it by the Constitution.

Petition for certiorari is dismissed. (*Nicolas Y. Feliciano, et al., Petitioners, vs. Arsenio Lugay, et al., Respondents, G. R. No. L-6756, promulgated September 16, 1953.*)

#### SECTION 21, REVISED ELECTION CODE

A VICE MAYOR HAS NO RIGHT TO HOLD THE OFFICE OF MAYOR WHICH HAS BEEN FILLED BY APPOINTMENT BY THE PRESIDENT WITH THE CONSENT OF THE GOVERNOR AND THE PROVINCIAL BOARD, NOTWITHSTANDING THE FACT THAT THE APPOINTEE IS THE FORMER MAYOR-ELECT WHO HAD BEEN DECLARED INELIGIBLE.

FACTS: In an election protest, the herein respondent was declared ineligible to hold office as mayor of Victoria, Tarlac. Subsequently, the acting executive secretary, by order of the President, appointed the respondent as acting mayor. In this petition for quo warranto, the petitioner, as duly elected and qualified vice mayor, demands that the respondent turn over to the former the office of mayor.

Petitioner relies upon section 2195 of the Revised Administrative Code and section 21, paragraph (b) of Republic Act 180. Respond-

<sup>1</sup> Remigio Prudente, et al., vs. Angel Genuino (L-5222, Res. of Nov. 6, 1951).

<sup>2</sup> Secs. 177 and 178 of the Revised Election Code.

<sup>3</sup> Querubin vs. Court of Appeals, et al. (46 O. G. 1554); Cachola vs. Cordero (G. R. No. L-5780, Feb. 28, 1953.)

ent, on the other hand, invokes section 21, paragraphs (c), (d) and (e) of Republic Act 180.

HELD: The laws relied upon by the petitioner are not in point to the controversy. Section 2195 of the Revised Administrative Code refers to a temporary disability and section 21, paragraph (b) of Republic Act 180, refers to a vacancy resulting from death, resignation, removal or cessation of an incumbent, thereby implying that the latter is a *de jure* officer, the vacancy occurring only by virtue of a cause arising subsequent to his qualification.

Paragraphs (d) and (e) as relied upon by the respondent are not applicable. Paragraph (d) is not applicable because it does not cover a case where there is failure of election and paragraph (e) only deals with a situation where a special election has already been called and held.

The rules applicable are paragraphs (a) and (c). The failure of election has created a temporary vacancy within the meaning of paragraph (a), which shall be filled by appointment by the President, if it is a provincial or city office, and by the provincial governor with the consent of the provincial board, if it is a municipal office. The vacancy in this case is temporary for the simple reason that the President is called upon, under paragraph (c) to call a special election as soon as possible. Although the designation was made by the President, the appointment expressly stated that it was upon the recommendation of the Provincial Board of Tarlac, from which it can be properly deduced that said designation carried the sanction of the Provincial Governor and the Provincial Board.

Petition dismissed.<sup>1</sup> (*Manuel S. Gamalinda, Petitioner, vs. Jose V. Yap, Respondent, G. R. No. L-6121, promulgated May 30, 1953.*)

#### SECTION 98, REVISED ELECTION CODE

RESIDENCE IS NOT LOST BY CONTINUOUS STAY IN ANOTHER CITY OR MUNICIPALITY DUE TO STUDIES OR WAR AND/OR BY REGIS-

<sup>1</sup> Justice J. Pablo dissenting:

The law relied upon by petitioner should be applied in this case because section 21, paragraph (b) does not distinguish between the cessation of a *de jure* and a *de facto* incumbent. What the law does not distinguish the court should not distinguish.