

illegal registry lists of voters although said lists have become permanent¹ 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 contests² were held directory.³ 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-

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

² Secs. 177 and 178 of the Revised Election Code.

³ 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.¹ (*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-

¹ 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.