



Republic of the Philippines
Supreme Court

Manila

EN BANC

CASIMIRA S. DELA CRUZ,
Petitioner,

G.R. No. 192221

Present:

SERENO, C.J.,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES, and
PERLAS-BERNABE, JJ.

- versus -

COMMISSION ON ELECTIONS
and JOHN LLOYD M. PACETE,
Respondents.

Promulgated:

NOVEMBER 13, 2012

X-----X

DECISION

VILLARAMA, JR., J.:

With the adoption of automated election system in our country, one of the emerging concerns is the application of the law on nuisance candidates under a new voting system wherein voters indicate their choice of candidates by shading the oval corresponding to the name of their chosen candidate printed on the ballots, instead of writing the candidate's name on the appropriate space provided in the ballots as in previous manual elections. If the name of a nuisance candidate whose certificate of candidacy had been cancelled by the Commission on Elections (COMELEC) was still

included or printed in the official ballots on election day, should the votes cast for such nuisance candidate be considered stray or counted in favor of the *bona fide* candidate?

The Case

In this petition for certiorari with prayer for injunctive relief/s under Rule 65 in conjunction with Section 2, Rule 64 of the 1997 Rules of Civil Procedure, as amended, filed on May 31, 2010, Casimira S. Dela Cruz (petitioner) assails COMELEC Resolution No. 8844¹ considering as stray the votes cast in favor of certain candidates who were either disqualified or whose COCs had been cancelled/denied due course but whose names still appeared in the official ballots or certified lists of candidates for the May 10, 2010 elections.

Petitioner prays for the following reliefs:

1. Upon the filing of the instant Petition, a Temporary Restraining Order and/or Writ of Preliminary Injunction be issued enjoining the taking of oath and assumption into office of Private Respondent John Lloyd Pacete as Vice-Mayor of the Municipality of Bugasong;

2. After the Petition is submitted for resolution, a decision be rendered granting the instant Petition and:

(a) declaring as null and void the portion of COMELEC Resolution No. 8844 considering as stray the votes cast in favor of the disqualified nuisance candidate Aurelio N. Dela Cruz;

(b) ordering that the votes cast in favor of Aurelio N. Dela Cruz be counted and tallied in favor of Petitioner Casimira S. Dela Cruz pursuant to COMELEC Resolution No. 4116; and

(c) requiring the Regional Trial Court of the Province of Antique where the Petitioner's Election Protest is pending to proclaim as Vice-Mayor of the Municipality of Bugasong the candidate who obtained the highest number of votes after the votes in favor of nuisance candidate Aurelio N. Dela Cruz is counted and tallied to the votes garnered by Petitioner Casimira S. Dela Cruz.

¹ *Rollo*, pp. 83-89. Entitled, "In the Matter of Local Candidates Disqualified/Cancelled/Denied Due Course/Withdrawn Their Certificates of Candidacy For the May 10, 2010 Automated Elections" promulgated on May 1, 2010.

3. Permanently enjoining the taking of oath and assumption into office of Private Respondent if Petitioner is proclaimed as the Vice-Mayor of the Municipality of Bugasong, Province of Antique.

Other just and equitable reliefs are likewise prayed for.²

Factual Antecedents

In the 2001, 2004 and 2007 elections, petitioner ran for and was elected member of the *Sangguniang Bayan*(SB) of Bugasong, Antique. On November 28, 2009, petitioner filed her certificate of candidacy³ for the position of Vice-Mayor of the Municipality of Bugasong, Province of Antique under the ticket of the National People's Coalition (NPC). Subsequently, Aurelio N. Dela Cruz (Aurelio) also filed a certificate of candidacy⁴ for the same position.

On December 6, 2009, petitioner filed a petition⁵ to declare Aurelio a nuisance candidate on the ground that he filed his certificate of candidacy for the vice-mayoralty position to put the election process in mockery and to cause confusion among voters due to the similarity of his surname with petitioner's surname. Petitioner emphasized that she is considered a very strong candidate for the said position having been elected as member of the SB for three consecutive terms under the ticket of the NPC and obtained the fifth (2001), fourth (2004) and third (2007) highest number of votes. In contrast, Aurelio is an unknown in the political scene with no prior political experience as an elective official and no political party membership. Being a retiree and having no known business, Aurelio has no sufficient source of income but since the 2007 elections petitioner's opponents have been prodding him to run for the same position as petitioner in order to sow confusion and thwart the will of the voters of Bugasong. Petitioner further cited Aurelio's miserable showing in the previous local elections when he ran and garnered only 126 and 6 votes for the positions of SB member (May 2007) and barangay captain of Barangay Maray, Bugasong (November

² Id. at 77-78.

³ Id. at 124.

⁴ Id. at 125.

⁵ Id. at 90-98.

2007), respectively. Citing *Bautista v. COMELEC*,⁶ petitioner asserted that these circumstances clearly demonstrate Aurelio’s lack of a *bona fide* intention and capability to run for the position of Vice-Mayor, thus preventing a faithful determination of the true will of the electorate.

On January 29, 2010, the COMELEC First Division issued a Resolution⁷ declaring Aurelio as a nuisance candidate and cancelling his certificate of candidacy for the vice-mayoralty position in Bugasong.

Despite the declaration of Aurelio as a nuisance candidate, however, his name was not deleted in the Certified List of Candidates⁸ and Official Sample Ballot⁹ issued by the COMELEC. The names of the candidates for Vice-Mayor, including Aurelio and respondent John Lloyd M. Pacete, appeared on the Official Sample Ballot as follows:

VICE-MAYOR			
Vote for not more than 1			
<input type="radio"/> 1. DELA CRUZ, Aurelio N. “REL” (IND.)	<input type="radio"/> 2. DELA CRUZ, Casimira S. “MIRAY” (NPC)	<input type="radio"/> 3. PACETE, John Lloyd M. “BINGBING” (NP)	

Consequently, petitioner filed on March 23, 2010, an Urgent Ex-Parte Omnibus Motion¹⁰ praying, among other things, that COMELEC issue an order directing the deletion of Aurelio’s name from the Official List of Candidates for the position of Vice-Mayor, the Official Ballots, and other election paraphernalia to be used in Bugasong for the May 2010 elections. She also prayed that in the event Aurelio’s name can no longer be deleted in time for the May 10, 2010 elections, the COMELEC issue an order directing that all votes cast in favor of Aurelio be credited in her favor, in accordance with COMELEC Resolution No. 4116 dated May 7, 2001.

On May 1, 2010, the COMELEC En Banc issued Resolution No. 8844¹¹ listing the names of disqualified candidates, including Aurelio, and disposing as follows:

⁶ G.R. No. 133840, November 13, 1998, 298 SCRA 480.
⁷ *Rollo*, pp. 139-143.
⁸ *Id.* at 144-145.
⁹ *Id.* at 146.
¹⁰ *Id.* at 147-155.
¹¹ *Id.* at 83-89.

NOW THEREFORE, the Commission RESOLVED, as it hereby RESOLVES, as follows:

- 1. to delete the names of the foregoing candidates from the certified list of candidates; and
- 2. to **consider stray the votes of said candidates, if voted upon.**¹²(Emphasis supplied)

On May 10, 2010, the first automated national and local elections proceeded as scheduled. Aurelio’s name remained in the official ballots.

During the canvassing of the votes by the Municipal Board of Canvassers (MBOC) of Bugasong on May 13, 2010, petitioner insisted that the votes cast in favor of Aurelio be counted in her favor. However, the MBOC refused, citing Resolution No. 8844. The Statement of Votes by Precinct for Vice-Mayor of Antique-Bugasong¹³ showed the following results of the voting:

	TOTAL	RANK
DELA CRUZ, AURELIO N.	532	3
DELA CRUZ, CASIMIRA S.	6389	2
PACETE, JOHN LLOYD M.	6428	1

Consequently, on May 13, 2010, private respondent John Lloyd M. Pacete was proclaimed Vice-Mayor of Bugasong by the MBOC of Bugasong.¹⁴

On May 21, 2010, petitioner filed with the Regional Trial Court of the Province of Antique an election protest praying for (1) the tallying in her favor of the 532 votes cast for Aurelio; (2) the annulment of respondent Pacete’s proclamation as Vice-Mayor of Bugasong; and (3) her proclamation as winning candidate for the position of Vice-Mayor of Bugasong.

Petitioner’s Arguments

Considering that private respondent won by a margin of only thirty-nine (39) votes over petitioner’s 6,389 votes, petitioner contends that she

¹² Id. at 89.
¹³ Id. at 164-168.
¹⁴ Id. at 169.

would have clearly won the elections for Vice-Mayor of Bugasong had the MBOC properly tallied or added the votes cast for Aurelio to her votes. Thus, petitioner insists she would have garnered a total of 6,921 votes as against the 6,428 votes of private respondent. By issuing a directive to consider the votes cast for Aurelio as stray votes instead of counting the same in favor of petitioner in accordance with COMELEC Resolution No. 4116, the COMELEC's First Division gravely abused its discretion.

Petitioner argues that Resolution No. 8844 violates her constitutional right to equal protection of the laws because there is no substantial difference between the previous manual elections and the automated elections conducted in 2010 to justify non-observance of Resolution No. 4116 issued in 2001, particularly on the matter of votes cast for a candidate who was declared a nuisance candidate in a final judgment where such nuisance candidate has the same name with that of the *bona fide* candidate. Moreover, in contrast to the assailed resolution, COMELEC Resolution No. 4116 properly recognized the substantial distinctions between and among (a) disqualified candidates, (b) nuisance candidates whose names are similar to those of the *bona fide* candidates, (c) nuisance candidates who do not have similar names with those of the *bona fide* candidates, and (d) candidates who had voluntarily withdrawn their certificates of candidacy. As a result of the failure of the COMELEC's First Division to make these important distinctions when it issued Resolution No. 8844 that applies to disqualified candidates, nuisance candidates and all other candidates whose certificates of candidacy had been cancelled or denied course, petitioner's right to due process was clearly violated, and only made possible the very evil that is sought to be corrected by the former rule not to consider the votes cast for the nuisance candidate as stray but count them in favor of the *bona fide* candidate.

Respondents' Arguments

COMELEC maintains that there is a presumption of validity with respect to its exercise of supervisory or regulatory authority in the conduct

of elections. Also, the time-honored rule is that a statute is presumed to be constitutional and that the party assailing it must discharge the burden of clearly and convincingly proving its invalidity. Thus, to strike down a law as unconstitutional, there must be a clear and unequivocal showing that what the law prohibits, the statute permits. In this case, petitioner miserably failed to prove a clear breach of the Constitution; she merely invokes a violation of the equal protection clause and due process of law without any basis.

On the claim of equal protection violation, COMELEC contends that there is a substantial distinction between a manual election where Resolution No. 4116 applies, and an automated election governed by Resolution No. 8844. While the votes for the nuisance candidate were not considered stray but counted in favor of the *bona fide* candidate, this is no longer the rule for automated elections. COMELEC cites the following factors which changed the previous rule: (1) the official ballots in automated elections now contain the full names of the official candidates so that when a voter shaded an oval, it was presumed that he carefully read the name adjacent to it and voted for that candidate, regardless of whether said candidate was later declared disqualified or nuisance; (2) since the names of the candidates are clearly printed on the ballots, unlike in manual elections when these were only listed in a separate sheet of paper attached to the ballot secrecy folder, the voter's intention is clearly to vote for the candidate corresponding to the shaded oval; (3) the rules on appreciation of ballots under Section 211, Article XVIII of the Omnibus Election Code apply only to elections where the names of candidates are handwritten in the ballots; and (4) with the use of the automated election system where the counting of votes is delegated to the Precinct Count Optical Scan (PCOS) machines, pre-proclamation controversies, including complaints regarding the appreciation of ballots and allegations of misreading the names of the candidates written, were flaws which the automation rectified. Aside from being germane to the purpose of our election laws, Resolution No. 8844 is not limited to existing conditions as it is applicable to all persons of the same class even in succeeding

elections, and covered all disqualified and nuisance candidates without distinction.

Lastly, COMELEC asserts there is no violation of the right to due process. For public office is not a property right and no one has a vested right to any public office.

On his part, private respondent Pacete asserts that petitioner cannot validly claim the votes cast for Aurelio in view of the rule provided in Section 211 (24) of Batas Pambansa Blg. 881, which cannot be supplanted by Resolution No. 4116. He also cites an annotation on election law,¹⁵ invoking this Court's ruling in *Kare v. COMELEC*¹⁶ that the aforesaid provision when read together with Section 72, are understood to mean that "any vote cast in favor of a candidate, whose disqualification has already been declared final regardless of the ground therefor, shall be considered stray."

Private respondent also points out the fact that on May 4, 2010, COMELEC caused the publication of Resolution No. 8844 in two newspapers of general circulation in the country. There was thus an earnest effort on the part of COMELEC to disseminate the information, especially to the voters in Bugasong, Antique, that the name of Aurelio was printed on the official ballots as one of the candidates for Vice-Mayor. Said voters were amply forewarned about the status of Aurelio's candidacy and the consequences that will obtain should he still be voted for. Additionally, the petitioner and Aurelio bear different first names, female and male, respectively; petitioner and her political party engaged in a massive voter education during the campaign period, emphasizing to her supporters that she was given the corresponding number ("2") in the official ballots, and the voters should be very circumspect in filling up their ballots because in case of error in filling up the same, they will not be given replacement ballots.

¹⁵ J. N. Bellosillo, J. M. P. Marquez, and E. L.J. Mapili, OMNIBUS ELECTION CODE WITH RULES OF PROCEDURE AND JURISPRUDENCE IN ELECTION LAW, pp. 192-193.

¹⁶ G.R. Nos. 157526 & 157527, April 28, 2004, 428 SCRA 264, 273.

As to the Judicial Affidavits of those who voted for petitioner attesting to the fact of mistakenly shading the oval beside the name of Aurelio in the ballots, which was attached to the petition, petitioner in effect would want this Court to sit in judgment as trier of facts.

Ruling of the Court

The petition is meritorious.

The only question that may be raised in a petition for certiorari under Section 2, Rule 64 of the Revised Rules of Court is whether or not the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction.¹⁷ For a petition for certiorari to prosper, there must be a clear showing of caprice and arbitrariness in the exercise of discretion. There is also grave abuse of discretion when there is a contravention of the Constitution, the law or existing jurisprudence.¹⁸

COMELEC being a specialized agency tasked with the supervision of elections all over the country, its factual findings, conclusions, rulings and decisions rendered on matters falling within its competence shall not be interfered with by this Court in the absence of grave abuse of discretion or any jurisdictional infirmity or error of law.¹⁹ In this case, Resolution No. 8844 issued by COMELEC clearly contravened existing law and jurisprudence on the legal effect of declaration of a candidate as a nuisance candidate, especially in the case of nuisance candidates who have the same surnames as those of *bona fide* candidates.

¹⁷ *Laurena, Jr. v. COMELEC*, G.R. No. 174499, June 29, 2007, 526 SCRA 230, 237, citing *Manzala v. COMELEC*, G.R. No. 176211, May 8, 2007, 523 SCRA 31, 38.

¹⁸ *Dueñas, Jr. v. House of Representatives Electoral Tribunal*, G.R. No. 185401, July 21, 2009, 593 SCRA 316, 345, citing *Perez v. Court of Appeals*, G.R. No. 162580, January 27, 2006, 480 SCRA 411, 416.

¹⁹ *Punzalan v. COMELEC*, G.R. Nos. 126669, 127900, 128800 and 132435, April 27, 1998, 289 SCRA 702, 716, citing *Mastura v. COMELEC*, G.R. No. 124521, January 29, 1998, 285 SCRA 493, *Bulaong v. COMELEC*, G.R. No. 116206, February 7, 1995, 241 SCRA 180, 190, *Navarro v. COMELEC*, G.R. No. 106019, December 17, 1993, 228 SCRA 596, 600, *Lozano v. Yorac*, G.R. Nos. 94521 & 94626, October 28, 1991, 203 SCRA 256 and *Pimping v. COMELEC*, Nos. L-69765-67, L-69773-75 & L-69846, November 19, 1985, 140 SCRA 192, 222.

Private respondent argues that no grave abuse of discretion can be imputed on COMELEC when it issued Resolution No. 8844 which is simply consistent with the rule laid down in Section 211 (24), Article XVIII and Section 72, Article IX of Batas Pambansa Blg. 881, otherwise known as the Omnibus Election Code (OEC). Said provisions state:

SEC. 72. *Effects of Disqualification cases and priority.* -- The Commission and the courts shall give priority to cases of disqualification by reason of violation of this Act to the end that a final decision shall be rendered not later than seven days before the election in which the disqualification is sought. Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. Nevertheless, if for any reason, a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, his violation of the provisions of the preceding sections shall not prevent his proclamation and assumption of office.

SEC. 211. *Rules for the appreciation of ballots.* -- In the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is clear and good reason to justify its rejection. The board of election inspectors shall observe the following rules, bearing in mind that the object of the election is to obtain the expression of the voter's will:

x x x x

24. Any vote cast in favor of a candidate who has been disqualified by final judgment shall be considered as stray and shall not be counted but it shall not invalidate the ballot.

Private respondent cites the case of *Kare v. COMELEC*²⁰ where this Court, construing the above provisions, stated:

According to the Comelec, Section 211 (24) of the OEC is a clear legislative policy that is contrary to the rule that the second placer cannot be declared winner.

We disagree.

The provision that served as the basis of Comelec's Decision to declare the second placer as winner in the mayoral race should be read in relation with other provisions of the OEC. Section 72 thereof, as amended by RA 6646, provides as follows:

x x x x

When read together, these provisions are understood to mean that any vote cast in favor of a candidate, whose *disqualification has already been declared final* **regardless of the ground therefor, shall be considered**

²⁰ Supra note 16.

stray. The Comelec misconstrued this provision by limiting it only to disqualification by conviction in a final judgment.

Obviously, the disqualification of a candidate is not only by conviction in a final judgment; the law lists other grounds for disqualification. It escapes us why the Comelec insists that Section 211(24) of the OEC is strictly for those convicted by a final judgment. Such an interpretation is clearly inconsistent with the other provisions of the election code.²¹ (Emphasis supplied; italics not ours)

Private respondent thus suggests that regardless of the ground for disqualification, the votes cast for the disqualified candidate should result in considering the votes cast for him as stray as explicitly mandated by Section 211(24) in relation to Section 72 of the OEC.

We disagree.

It bears to stress that Sections 211 (24) and 72 applies to all disqualification cases and not to petitions to cancel or deny due course to a certificate of candidacy such as Sections 69 (nuisance candidates) and 78 (material representation shown to be false). Notably, such facts indicating that a certificate of candidacy has been filed “to put the election process in mockery or disrepute, or to cause confusion among the voters by the similarity of the names of the registered candidates, or other circumstances or acts which clearly demonstrate that the candidate has no *bona fide* intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate” are not among those grounds enumerated in Section 68 (giving money or material consideration to influence or corrupt voters or public officials performing electoral functions, election campaign overspending and soliciting, receiving or making prohibited contributions) of the OEC or Section 40²² of Republic Act No. 7160 (Local Government Code of 1991).

²¹ Id. at 272-273.

²² Sec. 40. *Disqualifications.* – The following persons are disqualified from running for any elective local position:

- (a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;
- (b) Those removed from office as a result of an administrative case;
- (c) Those convicted by final judgment for violating the oath of allegiance to the Republic;
- (d) Those with dual citizenship;
- (e) Fugitives from justice in criminal or non-political cases here or abroad;

In *Fermin v. COMELEC*,²³ this Court distinguished a petition for disqualification under Section 68 and a petition to cancel or deny due course to a certificate of candidacy (COC) under Section 78. Said proceedings are governed by different rules and have distinct outcomes.

At this point, we must stress that a “Section 78” petition ought not to be interchanged or confused with a “Section 68” petition. **They are different remedies, based on different grounds, and resulting in different eventualities.** Private respondent’s insistence, therefore, that the petition it filed before the COMELEC in SPA No. 07-372 is in the nature of a disqualification case under Section 68, as it is in fact captioned a “Petition for Disqualification,” does not persuade the Court.

X X X X

To emphasize, a petition for disqualification, on the one hand, can be premised on Section 12 or 68 of the OEC, or Section 40 of the LGC. On the other hand, a petition to deny due course to or cancel a CoC can only be grounded on a statement of a material representation in the said certificate that is false. The petitions also have different effects. **While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all, as if he/she never filed a CoC.** Thus, in *Miranda v. Abaya*, this Court made the distinction that a candidate who is disqualified under Section 68 can validly be substituted under Section 77 of the OEC because he/she remains a candidate until disqualified; but a person whose CoC has been denied due course or cancelled under Section 78 cannot be substituted because he/she is never considered a candidate.²⁴ (Additional emphasis supplied)

Clearly, a petition to cancel or deny due course to a COC under Section 69 as in Section 78 cannot be treated in the same manner as a petition to disqualify under Section 68 as what COMELEC did when it applied the rule provided in Section 72 that the votes cast for a disqualified candidate be considered stray, to those registered candidates whose COC’s had been cancelled or denied due course. Strictly speaking, a cancelled certificate cannot give rise to a valid candidacy, and much less to valid votes. Said votes cannot be counted in favor of the candidate whose COC was cancelled as he/she is not treated as a candidate at all, as if he/she never

(f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and

(g) The insane or feeble-minded.

²³ G.R. Nos. 179695 and 182369, December 18, 2008, 574 SCRA 782.

²⁴ Id. at 794, 796.

filed a COC. But should these votes cast for the candidate whose COC was cancelled or denied due course be considered stray?

COMELEC Resolution No. 4116 issued in relation to the finality of resolutions or decisions in special action cases, provides:

This pertains to the finality of decisions or resolutions of the Commission *en banc* or division, particularly on Special Actions (Disqualification Cases).

Special Action cases refer to the following:

- (a) Petition to deny due course to a certificate of candidacy;
- (b) Petition to declare a candidate as a nuisance candidate;
- (c) Petition to disqualify a candidate; and
- (d) Petition to postpone or suspend an election.

Considering the foregoing and in order to guide field officials on the finality of decisions or resolutions on special action cases (disqualification cases) the Commission, RESOLVES, as it is hereby RESOLVED, as follows:

(1) the decision or resolution of the En Banc of the Commission on disqualification cases shall become final and executory after five (5) days from its promulgation unless restrained by the Supreme Court;

X X X

(4) the decision or resolution of the En Banc on nuisance candidates, particularly whether the nuisance candidate has the same name as the bona fide candidate shall be immediately executory;

(5) *the decision or resolution of a DIVISION on nuisance candidate, particularly where the nuisance candidate has the same name as the bona fide candidate shall be immediately executory after the lapse of five (5) days unless a motion for reconsideration is seasonably filed. In which case, the votes cast shall not be considered stray but shall be counted and tallied for the bona fide candidate.*

All resolutions, orders and rules inconsistent herewith are hereby modified or repealed. (Emphasis supplied)²⁵

The foregoing rule regarding the votes cast for a nuisance candidate declared as such under a final judgment was applied by this Court in *Bautista v. COMELEC*²⁶ where the name of the nuisance candidate Edwin Bautista (having the same surname with the *bona fide* candidate) still

²⁵ Cited in *Martinez III v. House of Representatives Electoral Tribunal*, G.R. No. 189034, January 12, 2010, 610 SCRA 53, 75-76.

²⁶ Supra note 6.

appeared on the ballots on election day because while the COMELEC rendered its decision to cancel Edwin Bautista's COC on April 30, 1998, it denied his motion for reconsideration only on May 13, 1998 or three days after the election. We said that the votes for candidates for mayor separately tallied on orders of the COMELEC Chairman was for the purpose of later counting the votes and hence are not really stray votes. These separate tallies actually made the will of the electorate determinable despite the apparent confusion caused by a potential nuisance candidate.

But since the COMELEC decision declaring Edwin Bautista a nuisance candidate was not yet final on electionday, this Court also considered those factual circumstances showing that the votes mistakenly deemed as "stray votes" refer to only the legitimate candidate (petitioner Efren Bautista) and could not have been intended for Edwin Bautista. We further noted that the voters had constructive as well as actual knowledge of the action of the COMELEC delisting Edwin Bautista as a candidate for mayor.

A stray vote is invalidated because there is no way of determining the real intention of the voter. This is, however, not the situation in the case at bar. Significantly, it has also been established that by virtue of newspaper releases and other forms of notification, the voters were informed of the COMELEC's decision to declare Edwin Bautista a nuisance candidate.²⁷

In the more recent case of *Martinez III v. House of Representatives Electoral Tribunal*,²⁸ this Court likewise applied the rule in COMELEC Resolution No. 4116 not to consider the votes cast for a nuisance candidate stray but to count them in favor of the *bona fide* candidate notwithstanding that the decision to declare him as such was issued only after the elections.

As illustrated in *Bautista*, the pendency of proceedings against a nuisance candidate on election day inevitably exposes the *bona fide* candidate to the confusion over the similarity of names that affects the voter's will and frustrates the same. It may be that the factual scenario in *Bautista* is not exactly the same as in this case, mainly because the Comelec resolution declaring Edwin Bautista a nuisance candidate was issued *before* and not after the elections, with the electorate having been

²⁷ Id. at 493-494.

²⁸ G.R. No. 189034, January 12, 2010, 610 SCRA 53.

informed thereof through newspaper releases and other forms of notification on the day of election. Undeniably, however, the adverse effect on the voter's will was similarly present in this case, if not worse, considering the substantial number of ballots with only "MARTINEZ" or "C. MARTINEZ" written on the line for Representative - over five thousand - which have been declared as stray votes, the invalidated ballots being more than sufficient to overcome private respondent's lead of only 453 votes after the recount.²⁹

Here, Aurelio was declared a nuisance candidate long before the May 10, 2010 elections. On the basis of Resolution No. 4116, the votes cast for him should not have been considered stray but counted in favor of petitioner. COMELEC's changing of the rule on votes cast for nuisance candidates resulted in the invalidation of significant number of votes and the loss of petitioner to private respondent by a slim margin. We observed in *Martinez*:

Bautista upheld the basic rule that the primordial objective of election laws is to give effect to, rather than frustrate, the will of the voter. The inclusion of nuisance candidates turns the electoral exercise into an uneven playing field where the *bona fide* candidate is faced with the prospect of having a significant number of votes cast for him invalidated as stray votes by the mere presence of another candidate with a similar surname. Any delay on the part of the COMELEC increases the probability of votes lost in this manner. While political campaigners try to minimize stray votes by advising the electorate to write the full name of their candidate on the ballot, still, election woes brought by nuisance candidates persist.

The Court will not speculate on whether the new automated voting system to be implemented in the May 2010 elections will lessen the possibility of confusion over the names of candidates. What needs to be stressed at this point is the apparent failure of the HRET to give weight to relevant circumstances that make the will of the electorate *determinable*, following the precedent in *Bautista*. x x x³⁰

COMELEC justified the issuance of Resolution No. 8844 to amend the former rule in Resolution No. 4116 by enumerating those changes brought about by the new automated election system to the form of official ballots, manner of voting and counting of votes. It said that the substantial distinctions between manual and automated elections validly altered the rules on considering the votes cast for the disqualified or nuisance candidates. As to the rulings in *Bautista* and *Martinez III*, COMELEC opines that these find no application in the case at bar because the rules on

²⁹ Id. at 73.

³⁰ Id. at 74.

appreciation of ballots apply only to elections where the names of candidates are handwritten in the ballots.

The Court is not persuaded.

In *Martinez III*, we took judicial notice of the reality that, especially in local elections, political rivals or operators benefited from the usually belated decisions by COMELEC on petitions to cancel or deny due course to COCs of potential nuisance candidates. In such instances, political campaigners try to minimize stray votes by advising the electorate to write the full name of their candidate on the ballot, but still, election woes brought by nuisance candidates persist.³¹

As far as COMELEC is concerned, the confusion caused by similarity of surnames of candidates for the same position and putting the electoral process in mockery or disrepute, had already been rectified by the new voting system where the voter simply shades the oval corresponding to the name of their chosen candidate. However, as shown in this case, COMELEC issued Resolution No. 8844 on May 1, 2010, nine days before the elections, with sufficient time to delete the names of disqualified candidates not just from the Certified List of Candidates but also from the Official Ballot. Indeed, what use will it serve if COMELEC orders the names of disqualified candidates to be deleted from list of official candidates if the official ballots still carry their names?

We hold that the rule in Resolution No. 4116 considering the votes cast for a nuisance candidate declared as such in a final judgment, particularly where such nuisance candidate has the same surname as that of the legitimate candidate, not stray but counted in favor of the latter, remains a good law. As earlier discussed, a petition to cancel or deny a COC under Section 69 of the OEC should be distinguished from a petition to disqualify under Section 68. Hence, the legal effect of such cancellation of a COC of a

³¹ Id.

nuisance candidate cannot be equated with a candidate disqualified on grounds provided in the OEC and Local Government Code.

Moreover, private respondent admits that the voters were properly informed of the cancellation of COC of Aurelio because COMELEC published the same before election day. As we pronounced in *Bautista*, the voters' constructive knowledge of such cancelled candidacy made their will more determinable, as it is then more logical to conclude that the votes cast for Aurelio could have been intended only for the legitimate candidate, petitioner. The possibility of confusion in names of candidates if the names of nuisance candidates remained on the ballots on election day, cannot be discounted or eliminated, even under the automated voting system especially considering that voters who mistakenly shaded the oval beside the name of the nuisance candidate instead of the *bona fide* candidate they intended to vote for could no longer ask for replacement ballots to correct the same.

Finally, upholding the former rule in Resolution No. 4116 is more consistent with the rule well-ensconced in our jurisprudence that laws and statutes governing election contests especially appreciation of ballots must be liberally construed to the end that the will of the electorate in the choice of public officials may not be defeated by technical infirmities.³² Indeed, as our electoral experience had demonstrated, such infirmities and delays in the delisting of nuisance candidates from both the Certified List of Candidates and Official Ballots only made possible the very evil sought to be prevented by the exclusion of nuisance candidates during elections.

WHEREFORE, the petition is hereby **GIVEN DUE COURSE** and the writ prayed for, accordingly **GRANTED**. COMELEC Resolution No. 8844 dated May 1, 2010 insofar as it orders that the votes cast for candidates listed therein, who were declared nuisance candidates and whose certificates of candidacy have been either cancelled or set aside, be considered stray, is hereby declared **NULL and VOID**. Consequently, the 532 votes cast for

³² Id. at 77.

Aurelio N. Dela Cruz during the elections of May 10, 2010 should have been counted in favor of Casimira S. Dela Cruz and not considered stray votes, making her total garnered votes 6,921 as against the 6,428 votes of private respondent John Lloyd M. Pacete who was the declared winner.

Petitioner Casimira S. Dela Cruz is hereby **DECLARED** the duly elected Vice-Mayor of the Municipality of Bugasong, Province of Antique in the May 10, 2010 elections.

This Decision is immediately executory.


Let a copy of this Decision be served personally upon the parties and the Commission on Elections.


No pronouncement as to costs.

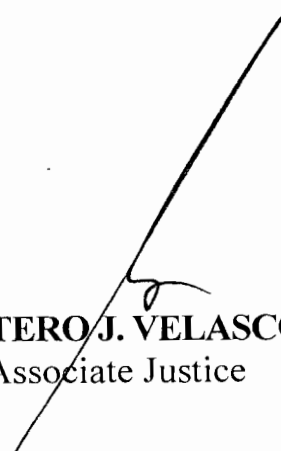
SO ORDERED.

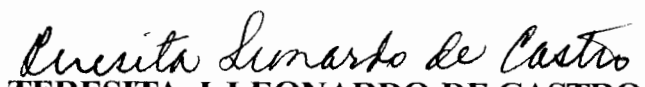

MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:

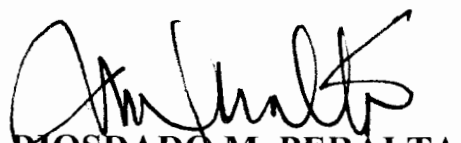

MARIA LOURDES P. A. SERENO
Chief Justice

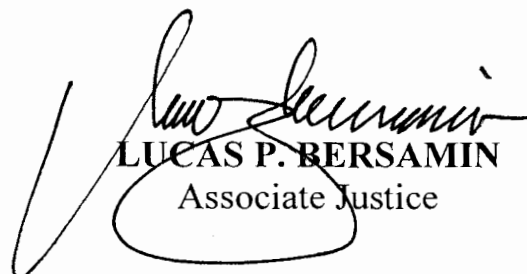

ANTONIO T. CARPIO
Associate Justice


PRESBITERO J. VELASCO, JR.
Associate Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice


ARTURO D. BRION
Associate Justice


DIOSDADO M. PERALTA
Associate Justice


LUCAS P. BERSAMIN
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice


ROBERTO A. ABAD
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice


BIENVENIDO L. REYES
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


MARIA LOURDES P. A. SERENO
Chief Justice