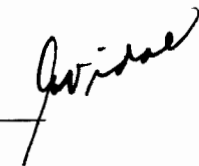


EN BANC

**G.R. No. 193237 – DOMINADOR G. JALOSJOS, JR., *petitioner*, versus
THE COMMISSION ON ELECTIONS and AGAPITO J.
CARDINO, *respondents*.**

**G.R. No. 193536 – AGAPITO J. CARDINO, *petitioner*, versus
DOMINADOR G. JALOSJOS, JR. and THE COMMISSION ON
ELECTIONS, *respondents*.**

Promulgated:

OCTOBER 09, 2012 

X-----X

DISSENTING OPINION

REYES, J.:

With all due respect, I dissent from the majority opinion.

Subject of this case are two (2) consolidated Petitions for *Certiorari* under Rule 65 of the Rules of Court. In G.R. No. 193237, petitioner Dominador G. Jalosjos, Jr. (Jalosjos) seeks to annul and set aside the Resolutions dated May 10, 2010¹ and August 11, 2010² issued by the Commission on Elections (COMELEC), which respectively ordered for the cancellation of his Certificate of Candidacy (COC) and denied his Motion for Reconsideration.

In G.R. No. 193536, petitioner Agapito J. Cardino (Cardino) likewise assails the Resolution dated August 11, 2010, particularly the dispositive portion thereof which contained the directive to apply the provision of the Local Government Code (LGC) on succession in filling the vacated office of the mayor.

¹ G.R. No. 193237 *rollo*, pp. 40-48.

² *Id.* at 49-56.

Jalosjos attributes grave abuse of discretion on the COMELEC *en banc* in (1) ruling that the grant of his probation was revoked, hence, he is disqualified to run as Mayor of Dapitan City, Zamboanga Del Norte, (2) cancelling his COC without a finding that he committed a deliberate misrepresentation as to his qualifications, considering that he merely relied in good faith upon a previous decision of the COMELEC wherein he was declared eligible to run for public office, and (3) issuing the Resolutions dated May 10, 2010 and August 11, 2010 in violation of the COMELEC Rules of Procedure.

On February 22, 2011, this Court issued a Resolution³ dismissing G.R. No. 193237, the dispositive portion of which reads:

WHEREFORE, the foregoing premises considered, the Petition for Certiorari is **DISMISSED**. The assailed Resolution dated May 10, 2010 and Resolution dated August 11, 2010 of the Commission in (sic) Elections in SPA Case No. 09-076 (DC) are hereby **AFFIRMED**.⁴

This Court ruled that Jalosjos could not have qualified to run for any public office as the grant of his probation was revoked by the RTC, as early as March 19, 1987 and that he could not rely on the Certification dated December 19, 2003 issued by former Parole and Probation Administrator Gregorio F. Bacolod to assert his eligibility. We ratiocinated:

It must be remembered that by the time Bacolod submitted his Termination Report on January 23, 2004, there was no longer a *probation* to speak of, the same having been revoked more than 16 years earlier. Under the Probation Law of 1976, the order of revocation is not appealable. There is no showing that the RTC ever issued a subsequent order suspending the execution of petitioner's sentence and granting him probation again. In fact, the RTC issued an alias warrant of arrest on January 17, 2004 pursuant to the March 19, 1987 Order of revocation.

Thus, the same order revoking the grant of probation was valid and subsisting at the time that petitioner supposedly completed his probation. Petitioner could not have validly complied with the conditions of his

³ Id. at 355-360.

⁴ Id. at 360.

probation and there would have been no basis for any probation officer to accept petitioner's compliance with a non-existent probation order.

This, plus the cloud of doubt created by Bacolod's conviction for falsification of the certification relied upon by petitioner, the Court cannot now rely on the presumption of regularity in the issuance of said certification in order for us to conclude that petitioner has in fact completed his probation. Considering that petitioner likewise has not served the sentence of his conviction for the crime of robbery, he is disqualified to run for and hold his current position as Mayor of Dapitan City.⁵ (Citation omitted)

Undeterred, Jalosjos filed a Motion for Reconsideration⁶ on March 22, 2011, raising the same issues stated in his petition. Subsequently, he filed a Manifestation dated May 30, 2012, informing this Court that he had already tendered his resignation from his position as Mayor of Dapitan City, Zamboanga del Norte and that the same was accepted by the Governor of the province, Atty. Rolando E. Yebes.

I will deliberate on the Motion for Reconsideration filed by Jalosjos in G.R. No. 193237 despite his resignation from office, in conjunction with the merits of G.R. No. 193536, with which it shares identical factual background.

The allegations in the petition filed by Cardino in SPA No. 09-076 (DC) bespeak of its characterization as one for disqualification.

It is well to remember that G.R. Nos. 193237 and 193536 stemmed from the *Petition to Deny Due Course and to Cancel Certificate of Candidacy of Respondent* filed by Cardino against Jalosjos, docketed as SPA No. 09-076 (DC). In the said petition, Cardino alleged:

3. Respondent [Jalosjos] is also of legal age, a resident of Dapitan City, a registered voter of Precinct No. 0187B, likewise filed his certificate of candidacy for the same position with the Office of the Comelec, Dapitan City, as that for which petitioner duly filed a certificate of

⁵ Id. at 359-360.

⁶ Id. at 373-393.

candidacy, for the May 10, 2010 national and local elections on December 1, 2009, a certified true copy of said COC is hereto attached as **Annex B**;

4. Respondent's [Jalosjos] certificate of candidacy under oath contains material misrepresentation, when he declared under oath, that respondent [Jalosjos] is eligible for the office he seeks to be elected, [par. 16, COC for Mayor], considering that he is not eligible for the position for which he filed a certificate of candidacy because respondent was convicted by final judgment by the Regional Trial Court of Cebu City in Crim. Case No. CCC-XIV-140-Cebu for Robbery, an offense involving moral turpitude and he was sentenced to suffer the penalty of "one [1] year, eight [8] Months and Twenty [20] days of prison correctional, as minimum, to Four [4] years, Two [2] months and One [1] day of prison mayor as maximum,["] a certified true (sic) of which decision is hereto attached as **Annex C**.

5. Respondent [Jalosjos] failed to serve even a single day of his sentence. The position requires that a candidate be eligible and/or qualified to aspire for the position as required under Section 74 of the Omnibus Election Code[.]⁷

On the basis of the foregoing allegations, Cardino prayed (1) that Jalosjos be declared ineligible for the position for which he filed a COC or that his COC be cancelled or denied due course, (2) that the Board of Election Inspectors of Dapitan City be directed to exclude all the votes cast in Jalosjos' name, (3) that the City Board of Canvassers be ordered to suspend or hold in abeyance Jalosjos' proclamation as the winning candidate, and (4) that Jalosjos be held liable for damages.⁸

Subsequently, the COMELEC First Division issued its Resolution dated May 10, 2010, granting Cardino's petition and cancelling Jalosjos' COC. The COMELEC First Division ratiocinated that Jalosjos "is not eligible by reason of his disqualification as provided for in Section 40(a) of Republic Act (R.A.) No. 7160."⁹

Jalosjos promptly filed his Motion for Reconsideration but the COMELEC *en banc* denied the same in its Resolution dated August 11, 2010. Introductory to the *ratio decidendi* of its ruling, the COMELEC *en banc* stated:

⁷ Id. at 57-58.

⁸ Id. at 59.

⁹ Id. at 47.

It is long settled that for [a] material representation to serve as ground for the cancellation of a candidate's certificate of candidacy, it must refer to his qualifications for elective office. Sections 39 and 40 of the Local Government Code or Republic Act No. 7160 prescribes the qualifications and disqualifications for elective municipal officials, x x x[.]¹⁰

Thereafter, the COMELEC *en banc* correlated Sections 39 and 40 of the LGC and proceeded to conclude that since Jalosjos was convicted by final judgment for the crime of robbery, he is disqualified to run for any elective position or to hold office.

I fully agree with the COMELEC's ruling that Jalosjos cannot run for any public office by reason of possession of a ground for disqualification. However, the COMELEC laid the predicate of said conclusion on a muddled discussion of the nature of the petition filed by Cardino and the effects of a judgment on the same on the status of candidacy.

Verily, a candidate may be prevented from participating in the electoral race either because he is ineligible or he suffers from any of the grounds for disqualification. *Ineligibility* refers to the lack of the qualifications prescribed in Sections 3¹¹ and 6¹² of Article VI, and Sections 2¹³ and 3¹⁴ of Article VII of the 1987 Constitution for senatorial, congressional, presidential and vice-presidential candidates, or under Section

¹⁰ Id. at 53.

¹¹ Art. VI, Sec. 3. No person shall be a Senator unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least thirty-five years of age, able to read and write, a registered voter, and a resident of the Philippines for not less than two years immediately preceding the day of the election.

¹² Art. VI, Sec. 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election.

¹³ Art. VII, Sec. 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

¹⁴ Art. VII, Sec. 3. There shall be a Vice-President who shall have the same qualifications and term of office and be elected with and in the same manner as the President. He maybe removed from office in the same manner as the President. x x x.

39¹⁵ of the LGC for local elective candidates. On the other hand, *disqualification* pertains to the commission of acts which the law perceives as unbecoming of a local servant, or to a circumstance, status or condition rendering said candidate unfit for public service. To question the eligibility of a candidate before the elections, the remedy is to file a petition to deny due course or cancel the COC under Section 78 of the Omnibus Election Code (OEC). If, on the other hand, any ground for disqualification exists, resort can be made to the filing of a petition for disqualification against the candidate thought to be unqualified for public service under Section 68 of the same Code.

Pertinently, Section 78 of OEC states:

Sec. 78. *Petition to deny due course to or cancel a certificate of candidacy.* – A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

To be clear, it is not the mere ineligibility or lack of qualification which warrants the filing of a petition to deny due course or cancel the COC but the material representation of his qualifications. *Material misrepresentation* as a ground to deny due course or cancel a COC refers to

¹⁵ Sec. 39. ***Qualifications.*** – (a) An elective local official must be a citizen of the Philippines; a registered voter in the *barangay*, municipality, city, or province or, in the case of a member of the *sangguniang panlalawigan*, *sangguniang panlungsod*, or *sangguniang bayan*, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.

(b) Candidates for the position of governor, vice-governor, or member of the *sangguniang panlalawigan*, or mayor, vice-mayor or member of the *sangguniang panlungsod* of highly urbanized cities must be at least twenty-three (23) years of age on election day.

(c) Candidates for the position of mayor or vice-mayor of independent component cities, component cities, or municipalities must be at least twenty-one (21) years of age on election day.

(d) Candidates for the position of member of the *sangguniang panlungsod* or *sangguniang bayan* must be at least eighteen (18) years of age on election day.

(e) Candidates for the position of *punong barangay* or member of the *sangguniang barangay* must be at least eighteen (18) years of age on election day.

(f) Candidates for the *sangguniang kabataan* must be at least fifteen (15) years of age but not more than twenty-one (21) years of age on election day.

the falsity of a statement required to be entered therein, as enumerated in Section 74 of the OEC,¹⁶ which reads:

Sec. 74. *Contents of certificate of candidacy.* – The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

Succinctly, the material misrepresentation contemplated by Section 78 of the OEC refers to *qualifications* for elective office. This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation in his COC are grave — to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. It could not have been the intention of the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake.¹⁷

Aside from the requirement of materiality, the false representation must consist of a deliberate attempt to mislead, misinform or hide a fact which would otherwise render a candidate ineligible. In other words, it must be with an intention to deceive the electorate as to one's qualification for public office.¹⁸

¹⁶ *Justimbaste v. Commission on Elections*, G.R. No. 179413, November 28, 2008, 572 SCRA 736, 740.

¹⁷ *Salcedo II v. COMELEC*, 371 Phil. 377, 389 (1999).

¹⁸ *Gonzalez v. Commission on Elections*, G.R. No. 192856, March 8, 2011, 644 SCRA 761, 775-776, citing *Salcedo II v. Commission on Elections*, supra note 37, at 390, citing *Romualdez-Marcos v. Commission on Elections*, G.R. No. 119976, September 18, 1995, 248 SCRA 300, *Abella v. Larrazabal*, 259 Phil. 992 (1989), *Aquino v. Commission on Elections*, 318 Phil. 467 (1995), *Labo, Jr. v. Commission on Elections*, G.R. No. 105111, July 3, 1992, 211 SCRA 297, *Frivaldo v. COMELEC*, 327 Phil. 521 (1996), *Republic v. De la Rosa*, G.R. No. 104654, June 6, 1994, 232 SCRA 785.

On the other hand, a petition for disqualification may be filed if the candidate committed any of the acts considered as an election offense stated in Section 68 of the OEC which reads:

Sec. 68. *Disqualifications*. – Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having[:] (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

The same petition may be filed on the ground of possession of a status or condition which makes the candidate incapable of assuming the stern demands of public service or which places him in serious contradiction with his oath of office, as enumerated in Section 12 of the OEC and Section 40 of the LGC:

Section 12 of the OEC

Sec. 12. *Disqualifications*. – Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion, or for any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.

The disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified.

Section 40 of the LGC

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;

(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.

The petition filed by Cardino in SPA No. 09-076 (DC) is a confusion of the remedies of petition to deny due course or cancel a COC and petition for disqualification. It must be remembered that while both remedies aim to prevent a candidate from participating in the elections, they are separate and distinct from one another. They are embraced by distinct provisions of law, which provide for their respective prescriptive periods and particular sets of grounds. Further, each remedy entails diverging effects on the status of candidacy of the concerned candidate thus subsuming one remedy within the coverage of the other is a dangerous feat.

In *Fermin v. Commission on Elections*,¹⁹ we had the occasion to ponder on the substantial differences between the two remedies, thus:

Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is *not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which may relate to the qualifications required of the public office he/she is running for*. It is noted that the candidate states in his/her CoC that he/she is **eligible** for the office he/she seeks. **Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office. If the candidate subsequently states a material representation in the CoC**

¹⁹

G.R. No. 179695, December 18, 2008, 574 SCRA 782.

that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate. Indeed, the Court has already likened a proceeding under Section 78 to a *quo warranto* proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a “Section 78” petition is filed before proclamation, while a petition for *quo warranto* is filed after proclamation of the winning candidate.

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.²⁰ (Citations omitted)

It is beyond dispute that Jalosjos cannot run for public office because of a prior conviction for a crime involving moral turpitude. While he was granted probation, his failure to comply with the terms and conditions of this privilege resulted to the revocation of the same on March 19, 1987. It bears reiterating that probation is not a right of an accused but a mere privilege, an act of grace and clemency or immunity conferred by the state, which may be granted to a seemingly deserving defendant who thereby escapes the extreme rigors of the penalty imposed by law for the offense for which he was convicted.²¹ As a mere discretionary grant, he must pay full obedience to the terms and conditions appertaining thereto or run the risk of the State

²⁰ Id. at 792-796.

²¹ *Santos v. Court of Appeals*, 377 Phil. 642, 652 (1999), citing *Francisco v. CA*, 313 Phil. 241, 254 (1995).

revoking this privilege. In *Soriano v. Court of Appeals*,²² this Court underscored the import of the terms and conditions of probation, to wit:

[T]hese conditions are not whims of the trial court but are requirements laid down by statute. They are among the conditions that the trial court is empowered to impose and the petitioner, as probationer, is required to follow. Only by satisfying these conditions may the purposes of probation be fulfilled. These include promoting the correction and rehabilitation of an offender by providing him with individualized treatment, and providing an opportunity for the reformation of a penitent offender which might be less probable if he were to serve a prison sentence. Failure to comply will result in the revocation of the order granting probation, pursuant to the Probation Law:

Sec. 11. *Effectivity of Probation Order.* — A probation order shall take effect upon its issuance, at which time the court shall inform the offender of the consequences thereof and explain that *upon his failure to comply with any of the conditions prescribed in the said order or his commission of another offense, he shall serve the penalty imposed for the offense under which he was placed on probation.*

Probation is not an absolute right. It is a mere privilege whose grant rests upon the discretion of the trial court. Its grant is subject to certain terms and conditions that may be imposed by the trial court. Having the power to grant probation, it follows that the trial court also has the power to order its revocation in a proper case and under appropriate circumstances.²³ (Citations omitted)

On the ground of Jalosjos' failure to comply with the terms and conditions of his probation, the RTC revoked said grant and ordered for the issuance of an alias warrant of arrest against him. Stripped of the privilege, he becomes an ordinary convict who is imposed with restraints in the exercise of his civil and political rights. Specifically, under Section 40(a) of the LGC, he is disqualified to run for any local elective office. His disqualification cannot be defeated by bare allegation that he was earlier granted probation as this does not perfunctorily obliterate the fact of conviction and the corresponding accessory penalties.

²² 363 Phil. 573 (1999).

²³ Id. at 583-584.

Further, in *Baclayon v. Hon. Mutia*,²⁴ we emphasized that an order placing defendant on “probation” is not a “sentence” but is rather a suspension of the imposition of sentence. It is not a final judgment but is rather an “interlocutory judgment” in the nature of a conditional order placing the convicted defendant under the supervision of the court for his reformation, to be followed by a final judgment of discharge, if the conditions of the probation are complied with, or by a final judgment of sentence if the conditions are violated.²⁵ With the revocation of the grant of Jalosjos’ probation, the temporary suspension of his sentence is lifted and all the ensuing disqualifications regain full effect.

Remarkably, Cardino’s challenge to Jalosjos’ candidacy was not based squarely on the fact that there is a final judgment of conviction for robbery against him but on the ground that he made a material misrepresentation in his COC by declaring that he is eligible to run for public office when there is an existing circumstance which renders his candidacy unacceptable. Based on the designation of his petition in SPA No. 09-076 (DC), Cardino intends to file a petition to cancel the COC of Jalosjos, an action which is governed by Section 74, in relation with Section 78 of the OEC. The combined application of these sections requires that the facts stated in the COC by the would-be candidate be true, as any false representation of a material fact is a ground for the COC’s cancellation or the withholding of due course.²⁶ Essentially, the details required to be stated in the COC are the personal circumstances of the candidate, *i.e.*, name/stage name, age, civil status, citizenship and residency, which serve as basis of his eligibility to become a candidate taking into consideration the standards set under the law. The manifest intent of the law in imposing these qualifications is to confine the right to participate in the elections to local residents who have reached the age when they can seriously reckon the gravity of the responsibility they wish to take on and who, at the same time,

²⁴ 214 Phil. 126 (1984).

²⁵ Id. at 132, citing *Commonwealth ex rel. Paige vs. Smith*, 198 A. 812, 813, 815, 130 Pa. Super. 536.

²⁶ *Velasco v. Commission on Elections*, G.R. No. 180051, December 24, 2008, 575 SCRA 590, 602.

are heavily acquainted with the actual state and urgent demands of the community.

A painstaking examination of the petition filed by Cardino with the COMELEC would reveal that while it is designated as a petition to deny due course to or cancel a COC, the ground used to support the same actually partake of a circumstance which is more fittingly used in a petition for disqualification. Section 40(a) of the LGC clearly enumerates a final judgment of conviction for a crime involving moral turpitude as a ground for disqualification. That Cardino employed the term “material misrepresentation” in his disputations cannot give his petition a semblance of what is properly a petition to cancel a COC. It bears reiterating that a petition to deny due course to or cancel a COC and a petition for disqualification are two separate and distinct actions which may be filed based on grounds pertaining to it. Thus, a petition for cancellation of COC cannot be predicated on a ground which is proper only in a petition for disqualification. The legislature would not have found it wise to provide for two different remedies to challenge the candidacy of an aspiring local servant and even provide for an enumeration of the grounds on which they may be based if they were intended to address the same predicament. The fact that the mentioned remedies were covered by separate provisions of law which relate to distinct set of grounds is a manifestation of the intention to treat them severally.

Considering that the core of Cardino’s petition in SPA No. 09-076 (DC) is the existence of a final judgment of conviction against Jalosjos, this material allegation is controlling of the characterization of the nature of the petition regardless of the caption used to introduce the same. Cardino’s petition must therefore be treated and evaluated as a petition for disqualification and not for cancellation of COC. Well-settled rule is that the caption is not determinative of the nature of the petition. What characterizes the nature of the action or petition are the material allegations

therein contained, irrespective of whether the petitioner is entitled to the reliefs prayed for therein.²⁷

In order to conform with existing laws and established jurisprudence, the Resolution dated February 22, 2011 of this Court in G.R. No. 193237 must accordingly be modified to reflect the foregoing clarification on the nature of Cardino's petition in SPA No. 09-076 (DC) and the ensuing consequences of the judgment on the same.

Turning to G.R. No. 193536, it is Cardino's contention that with the cancellation of Jalosjos' COC, he should succeed to the office of the mayor of Dapitan City, Zamboanga del Norte as he was the only remaining qualified candidate for said position. He posits that the cancellation of Jalosjos' COC retroacted to the date of its filing and rendered the latter a non-candidate as if he never filed one at all. Consequently, all the votes cast in his favor are considered stray and his proclamation as winning candidate did not produce any legal effect.

Further, Cardino imputes grave abuse of discretion on the part of the COMELEC for stating in the dispositive portion of its Resolution dated August 11, 2010 that the provisions on succession in the LGC will apply in filling the post vacated by Jalosjos. To begin with, he argues that Section 44 of the LGC applies only when a permanent vacancy occurs in the office of the mayor. A permanent vacancy contemplates a situation whereby the disqualified mayor was duly elected to the position and lawfully assumed the office before he vacated the same for any legal cause. It does not embrace cancellation of COC since this eventuality has the effect of rendering the individual a non-candidate, who cannot be voted for and much less, be proclaimed winner in the elections.²⁸

Cardino's disputations fail to persuade.

²⁷ *Guiang v. Co*, 479 Phil. 473, 480 (2004), citing *Ty v. Court of Appeals*, 408 Phil. 792 (2001).
²⁸ G.R. No. 193536 *rollo*, pp. 11-12.

**Cardino as a mere second placer
cannot be proclaimed mayor of
Dapitan City, Zamboanga del
Norte.**

Truly, a judgment on a petition to cancel a COC impinges on the very eligibility of an individual to qualify as a candidate and that its ultimate effect is to render the person a non-candidate as if he never filed a COC at all. The votes in favor of the candidate whose COC was cancelled are considered stray even if he happens to be the one who gathered the majority of the votes. In such case, the candidate receiving the second highest number of votes may be proclaimed the winner as he is technically considered the one who received the highest number of votes. Further, the judgment on a petition to cancel a COC does not distinguish whether the same attained finality before or after the elections since the consequences retroact to the date of filing of the COC. Regardless of the point in time when the cancellation of the COC was adjudged, the effect is nevertheless the same: the person is stripped of his status as an official candidate.

Cardino's disputations could have been tenable if the petition he filed in SPA No. 09-076 (DC) is a petition to cancel a COC. However, the pertinent allegations of his petition bespeak of the fact that the same is actually a petition for disqualification, the effect of which is covered by Section 6 of R.A. No. 6646, which repealed Section 72 of the OEC, to wit:

Sec. 6. Effect of Disqualification Case. – 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. 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, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong. (Italics ours)

Unlike a judgment on a petition to cancel a COC, the effects of a judgment on a petition for disqualification distinguish whether the same attained finality before or after the elections. If the judgment became final *before* the elections, the effect is identical to that of cancellation of a COC. If, however, the judgment attained finality *after* the elections, the individual is still considered an official candidate and may even be proclaimed winner should he muster the majority votes of the constituency.

In *Cayat v. Commission on Elections*,²⁹ we cogitated on the import of Section 6 of R.A. No. 6646, to wit:

Section 6 of the Electoral Reforms Law of 1987 covers **two situations**. The first is when the disqualification becomes final **before** the elections, which is the situation covered in the first sentence of Section 6. The second is when the disqualification becomes final **after** the elections, which is the situation covered in the second sentence of Section 6.

The present case falls under the **first situation**. Section 6 of the Electoral Reforms Law governing the first situation is categorical: **a candidate disqualified by final judgment before an election cannot be voted for, and votes cast for him shall not be counted**. The Resolution disqualifying Cayat became final on 17 April 2004, way before the 10 May 2004 elections. Therefore, all the 8,164 votes cast in Cayat's favor are stray. **Cayat was never a candidate in the 10 May 2004 elections**. Palileng's proclamation is proper because he was the sole and only candidate, second to none.³⁰ (Emphasis supplied)

The instant case falls under the second situation contemplated in Section 6 of R.A. No. 6646. The petition to disqualify Jalosjos was filed on December 6, 2009 and was resolved by the COMELEC on the very day of elections of May 10, 2010. Thus, on the election day, Jalosjos is still considered an official candidate notwithstanding the issuance of the COMELEC Resolution disqualifying him from holding public office. The pendency of a disqualification case against him or even the issuance of judgment of disqualification against him does not forthwith divest him of the right to participate in the elections as a candidate because the law requires no less than a final judgment. Thus, the votes cast in his name were rightfully

²⁹ G.R. 163776, April 24, 2007, 522 SCRA 23.

³⁰ Id. at 45.

counted in his favor and, there being no order suspending his proclamation, the City Board of Canvassers lawfully proclaimed him as the winning candidate. However, upon the finality of the judgment of disqualification against him on August 11, 2010, a permanent vacancy was created in the office of the mayor which must be filled in accordance with Section 44 of the LGC, which states:

Sec. 44. ***Permanent Vacancies in the Offices of the Governor, Vice Governor, Mayor, and Vice-Mayor.*** – If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. x x x.

x x x x

For purposes of this Chapter, a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.

The language of the law is clear, explicit and unequivocal, thus admits no room for interpretation but merely application.³¹ Accordingly, when Jalosjos was adjudged to be disqualified, a permanent vacancy was created in the office of the mayor for failure of the elected mayor to qualify for the position. As provided by law, it is the duly-elected vice-mayor of the locality who should succeed to the vacated office.

Following the foregoing ratiocination, Cardino's contention that he should be proclaimed mayor of Dapitan City, Zamboanga del Norte lacks legal basis. That he was the one who received the second highest number of votes does not entitle him to any right or preference to succeeding the vacated post. Unmistakably, he did not have the mandate of the voting populace and this must not be defeated by substituting him, a losing candidate, in place of the disqualified candidate who received the majority votes. In *Benito v. Commission on Elections*,³² we held:

³¹ *Sunga v. COMELEC*, 351 Phil. 310, 327 (1998).
³² 235 SCRA 436 (1994).

In every election, the people's choice is the paramount consideration and their expressed will must, at all times, be given effect. When the majority speaks and elects into office a candidate by giving him the highest number of votes cast in the election for that office, no one can be declared elected in his place.

The fact that the candidate who obtained the highest number of votes dies, or is later declared to be disqualified or not eligible for the office to which he was elected does not necessarily entitle the candidate who obtained the second highest number of votes to be declared the winner of the elective office. For to allow the defeated and repudiated candidate to take over the mayoralty despite his rejection by the electorate is to disenfranchise the electorate without any fault on their part and to undermine the importance and meaning of democracy and the people's right to elect officials of their choice.³³ (Citations omitted)

Further, in *Kare v. Commission on Elections*,³⁴ we further deliberated on the reason behind the doctrine of rejection of the second placer. We enunciated:

Theoretically, the second placer could receive just one vote. In such a case, it would be absurd to proclaim the totally repudiated candidate as the voters' choice. Moreover, there are instances in which the votes received by the second placer may not be considered numerically insignificant. In such situations, if the equation changes because of the disqualification of an ineligible candidate, voters' preferences would nonetheless be so volatile and unpredictable that the results for qualified candidates would not be self-evident. The absence of the apparent though ineligible winner among the choices could lead to a shifting of votes to candidates other than the second placer. Where an "ineligible" candidate has garnered either a majority or a plurality of the votes, by no mathematical formulation can the runner-up in the election be construed to have obtained the majority or the plurality of votes cast.³⁵ (Citations omitted)

In other words, a second placer cannot bank on a mere supposition that he could have won the elections had the winning candidate, who was eventually adjudged disqualified, been excluded in the roster of official candidates. It is erroneous to assume that the sovereign will could have opted for the candidate who received the second highest number of votes had they known of the disqualification of the winning candidate early on. For in such event, they could have cast their votes in favor of another

³³ Id. at 441-442.

³⁴ G.R. No. 157526, April 28, 2004, 428 SCRA 264.

³⁵ Id. at 274-275.

candidate, not necessarily the one who received the second highest number of votes.

Finally, Cardino impugns the wisdom of the doctrine of rejection of second placer which was first enunciated in *Topacio v. Paredes*³⁶ on the ground that the doctrine effectively discourages qualified candidates for the same position for which the disqualified candidate was elected, in initiating a disqualification case because the prospect of being proclaimed to the position is nil.³⁷

The doctrine of rejection of the second placer was not conceived to suit the selfish interests of losing candidates or arm them with a weapon to retaliate against the prevailing candidates. The primordial consideration in adhering to this doctrine is not simply to protect the interest of the other qualified candidates joining the electoral race but more than that, to safeguard the will of the people in whom the sovereignty resides. The doctrine ensures that only the candidate who has the people's faith and confidence will be allowed to run the machinery of the government. It is a guarantee that the popular choice will not be compromised, even in the occasion that the prevailing candidate is eventually disqualified, by replacing him with the next-in-rank official who was also elected to office by the authority of the electorate.

It is of no moment that, as Cardino surmised, the doctrine of rejection of the second placer dissuades other qualified candidates in filing a disqualification case against the prevailing candidate for lack of expectation of gain. To justify the abandonment of the doctrine following Cardino's asseveration is to reduce its significance and put premium on the interest of the candidate rather than of the electorate for whose interest the election is being conducted. The doctrine was for the protection of the public and not for any private individual's advantage. Thus, the right to file a petition for

³⁶ 23 Phil. 238 (1912).

³⁷ G.R. No. 193536 *rollo*, pp. 12-15.

disqualification is not exclusive to the opposing candidate but may also be pursued by any citizen of voting age, or duly registered political party, organization or coalition of political parties,³⁸ who are minded to do so.

In ruling therefore that the provisions of the LGC shall apply in determining the rightful successor to the office of the mayor of Dapitan City, Zamboanga del Norte, the COMELEC did not commit any grave abuse of discretion. The application of the provisions of the LGC is the necessary consequence of Jalosjos' disqualification.

In view of the foregoing disquisitions, I respectfully vote to:

- (1) **DISMISS** G.R. No. 193536 for lack of merit.
- (2) **MODIFY** the Resolution dated February 22, 2011 of this Court in G.R. No. 193237. The Resolutions dated May 10, 2010 and August 11, 2010 of the COMELEC in SPA No. 09-076 (DC) should be **AFFIRMED with MODIFICATION** in that Dominador G. Jalosjos, Jr. should be declared disqualified to run as Mayor of Dapitan City, Zamboanga del Norte and the provisions of the Local Government Code on succession be applied in filling the vacated office.


BIENVENIDO L. REYES
Associate Justice