



Republic of the Philippines
Supreme Court
Manila
EN BANC

EFREN RACEL ARATEA,
Petitioner,

G.R. No. 195229

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 ESTELA D. ANTIPOLO,
Respondents.

Promulgated:

OCTOBER 09, 2012

X ----- X

DECISION

CARPIO, J.:

The Case

This is a special civil action for *certiorari*¹ seeking to review and nullify the Resolution² dated 2 February 2011 and the Order³ dated

¹ Under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure.

² *Rollo*, pp. 34-39. Signed by Chairman Sixto S. Brillantes, Jr. (no part), and Commissioners Rene V. Sarmiento (with dissenting opinion), Nicodemo T. Ferrer, Lucenito N. Tagle, Armando C. Velasco (with dissenting opinion), Elias R. Yusoph, and Gregorio Y. Larrazabal.

³ *Id.* at 32-33. Signed by Chairman Jose A.R. Melo, and Commissioners Rene V. Sarmiento, Nicodemo T. Ferrer, Lucenito N. Tagle, Elias R. Yusoph, Armando C. Velasco, and Gregorio Y. Larrazabal.

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12 January 2011 of the Commission on Elections (COMELEC) En Banc in *Dra. Sigrid S. Rodolfo v. Romeo D. Lonzanida*, docketed as SPA No. 09-158 (DC). The petition asserts that the COMELEC issued the Resolution and Order with grave abuse of discretion amounting to lack or excess of jurisdiction.

The Facts

Romeo D. Lonzanida (Lonzanida) and Estela D. Antipolo (Antipolo) were candidates for Mayor of San Antonio, Zambales in the May 2010 National and Local Elections. Lonzanida filed his certificate of candidacy on 1 December 2009.⁴ On 8 December 2009, Dra. Sigrid S. Rodolfo (Rodolfo) filed a petition under Section 78 of the Omnibus Election Code to disqualify Lonzanida and to deny due course or to cancel Lonzanida's certificate of candidacy on the ground that Lonzanida was elected, and had served, as mayor of San Antonio, Zambales for four (4) consecutive terms immediately prior to the term for the May 2010 elections. Rodolfo asserted that Lonzanida made a false material representation in his certificate of candidacy when Lonzanida certified under oath that he was eligible for the office he sought election. Section 8, Article X of the 1987 Constitution⁵ and Section 43(b) of the Local Government Code⁶ both prohibit a local elective official from being elected and serving for more than three consecutive terms for the same position.

⁴ Id. at 65.

⁵ Sec. 8. The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

⁶ Sec. 43. *Term of Office.* – x x x x

(b) No local elective official shall serve for more than three (3) consecutive terms in the same position. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official concerned was elected.

x x x x

The COMELEC Second Division rendered a Resolution⁷ on 18 February 2010 cancelling Lonzanida's certificate of candidacy. Pertinent portions of the 18 February 2010 Resolution read:

Respondent Lonzanida never denied having held the office of mayor of San Antonio, Zambales for more than nine consecutive years. Instead he raised arguments to forestall or dismiss the petition on the grounds other than the main issue itself. We find such arguments as wanting. Respondent Lonzanida, for holding the office of mayor for more than three consecutive terms, went against the three-term limit rule; therefore, he could not be allowed to run anew in the 2010 elections. It is time to infuse new blood in the political arena of San Antonio.

WHEREFORE, premises considered, the instant petition is hereby GRANTED. The Certificate of Candidacy of Respondent Romeo D. Lonzanida for the position of mayor in the municipality of San Antonio, Zambales is hereby CANCELLED. His name is hereby ordered STRICKEN OFF the list of Official Candidates for the position of Mayor of San Antonio, Zambales in May 10, 2010 elections.

SO ORDERED.⁸

Lonzanida's motion for reconsideration before the COMELEC En Banc remained pending during the May 2010 elections. Lonzanida and Efren Racel Aratea (Aratea) garnered the highest number of votes and were respectively proclaimed Mayor and Vice-Mayor.

Aratea took his oath of office as Acting Mayor before Regional Trial Court (RTC) Judge Raymond C. Viray of Branch 75, Olongapo City on 5 July 2010.⁹ On the same date, Aratea wrote the Department of Interior and Local Government (DILG) and requested for an opinion on whether, as Vice-Mayor, he was legally required to assume the Office of the Mayor in view of Lonzanida's disqualification. DILG Legal Opinion No. 117, S. 2010¹⁰ stated that Lonzanida was disqualified to hold office by reason of his criminal conviction. As a consequence of Lonzanida's disqualification, the

⁷ *Rollo*, pp. 49-59. Penned by Commissioner Elias R. Yusoph, with Presiding Commissioner Nicodemo T. Ferrer and Commissioner Lucenito N. Tagle, concurring.

⁸ *Id.* at 58.

⁹ *Id.* at 96.

¹⁰ *Id.* at 94-95. Penned by Undersecretary Austere A. Panadero.

Office of the Mayor was deemed permanently vacant. Thus, Aratea should assume the Office of the Mayor in an acting capacity without prejudice to the COMELEC's resolution of Lonzanida's motion for reconsideration. In another letter dated 6 August 2010, Aratea requested the DILG to allow him to take the oath of office as Mayor of San Antonio, Zambales. In his response dated 24 August 2010, then Secretary Jesse M. Robredo allowed Aratea to take an oath of office as "the permanent Municipal Mayor of San Antonio, Zambales without prejudice however to the outcome of the cases pending before the [COMELEC]." ¹¹

On 11 August 2010, the COMELEC En Banc issued a Resolution ¹² disqualifying Lonzanida from running for Mayor in the May 2010 elections. The COMELEC En Banc's resolution was based on two grounds: *first*, Lonzanida had been elected and had served as Mayor for more than three consecutive terms without interruption; and *second*, Lonzanida had been convicted by final judgment of ten (10) counts of falsification under the Revised Penal Code. Lonzanida was sentenced for each count of falsification to imprisonment of four (4) years and one (1) day of *prisión correccional* as minimum, to eight (8) years and one (1) day of *prisión mayor* as maximum. The judgment of conviction became final on 23 October 2009 in the Decision of this Court in *Lonzanida v. People*, ¹³ before Lonzanida filed his certificate of candidacy on 1 December 2009. Pertinent portions of the 11 August 2010 Resolution read:

Prescinding from the foregoing premises, Lonzanida, for having served as Mayor of San Antonio, Zambales for more than three (3) consecutive terms and for having been convicted by a final judgment of a crime punishable by more than one (1) year of imprisonment, is clearly disqualified to run for the same position in the May 2010 Elections.

¹¹ Id. at 97.

¹² Id. at 60-67. Penned by Commissioner Armando C. Velasco, with Chairman Jose A. R. Melo and Commissioners Rene V. Sarmiento, Nicodemo T. Ferrer, Lucenito N. Tagle, Elias R. Yusoph, and Gregorio Y. Larrazabal, concurring.

¹³ G.R. Nos. 160243-52, 20 July 2009, 593 SCRA 273.

WHEREFORE, in view of the foregoing, the Motion for Reconsideration is hereby DENIED.

SO ORDERED.¹⁴

On 25 August 2010, Antipolo filed a Motion for Leave to Intervene and to Admit Attached Petition-in-Intervention.¹⁵ She claimed her right to be proclaimed as Mayor of San Antonio, Zambales because Lonzanida ceased to be a candidate when the COMELEC Second Division, through its 18 February 2010 Resolution, ordered the cancellation of his certificate of candidacy and the striking out of his name from the list of official candidates for the position of Mayor of San Antonio, Zambales in the May 2010 elections.

In his Comment filed on 26 January 2011, Aratea asserted that Antipolo, as the candidate who received the second highest number of votes, could not be proclaimed as the winning candidate. Since Lonzanida's disqualification was not yet final during election day, the votes cast in his favor could not be declared stray. Lonzanida's subsequent disqualification resulted in a permanent vacancy in the Office of Mayor, and Aratea, as the duly-elected Vice-Mayor, was mandated by Section 44¹⁶ of the Local Government Code to succeed as Mayor.

The COMELEC's Rulings

The COMELEC En Banc issued an Order dated 12 January 2011, stating:

¹⁴ *Rollo*, p. 66.

¹⁵ *Id.* at 68-74.

¹⁶ Sec. 44. *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor.* – (a) 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.

Acting on the “Motion for Leave to Intervene and to Admit Attached Petition-in-Intervention” filed by Estela D. Antipolo (Antipolo) and pursuant to the power of this Commission to suspend its Rules or any portion thereof in the interest of justice, this Commission hereby RESOLVES to:

1. GRANT the aforesaid Motion;
2. ADMIT the Petition-in-Intervention filed by Antipolo;
3. REQUIRE the Respondent, ROMEO DUMLAO LONZANIDA, as well as EFREN RACEL ARATEA, proclaimed Vice-Mayor of San Antonio, Zambales, to file their respective Comments on the Petition-in-Intervention within a non-extendible period of five (5) days from receipt thereof;
4. SET the above-mentioned Petition-in-Intervention for hearing on January 26, 2011 at 10:00 a.m. COMELEC Session Hall, 8th Floor, Palacio del Gobernador, Intramuros, Manila.

WHEREFORE, furnish copies hereof the parties for their information and compliance.

SO ORDERED.¹⁷

In its Resolution dated 2 February 2011, the COMELEC En Banc no longer considered Lonzanida’s qualification as an issue: “It is beyond cavil that Lonzanida is not eligible to hold and discharge the functions of the Office of the Mayor of San Antonio, Zambales. The sole issue to be resolved at this juncture is how to fill the vacancy resulting from Lonzanida’s disqualification.”¹⁸ The Resolution further stated:

We cannot sustain the submission of Oppositor Aratea that Intervenor Antipolo could never be proclaimed as the duly elected Mayor of Antipolo [sic] for being a second placer in the elections. The teachings in the cases of *Codilla vs. De Venecia* and *Nazareno and Domino vs. COMELEC, et al.*, while they remain sound jurisprudence find no application in the case at bar. What sets this case apart from the cited jurisprudence is that the notoriety of Lonzanida’s disqualification and ineligibility to hold public office is established both in fact and in law on election day itself. Hence, Lonzanida’s name, as already ordered by the Commission on February 18, 2010 should have been stricken off from the list of official candidates for Mayor of San Antonio, Zambales.

¹⁷ *Rollo*, pp. 32-33.

¹⁸ *Id.* at 36.

WHEREFORE, in view of the foregoing, the Commission hereby:

1. Declares NULL and VOID the proclamation of respondent ROMEO D. LONZANIDA;
2. GRANTS the Petition for Intervention of Estela D. Antipolo;
3. Orders the immediate CONSTITUTION of a Special Municipal Board of Canvassers to PROCLAIM Intervenor Estela D. Antipolo as the duly elected Mayor of San Antonio, Zambales;
4. Orders Vice-Mayor Efren Racel Aratea to cease and desist from discharging the functions of the Office of the Mayor, and to cause a peaceful turn-over of the said office to Antipolo upon her proclamation; and
5. Orders the Office of the Executive Director as well as the Regional Election Director of Region III to cause the implementation of this Resolution and disseminate it to the Department of Interior and Local Government.

SO ORDERED.¹⁹

Aratea filed the present petition on 9 February 2011.

The Issues

The manner of filling up the permanent vacancy in the Office of the Mayor of San Antonio, Zambales is dependent upon the determination of Lonzanida's removal. Whether Lonzanida was disqualified under Section 68 of the Omnibus Election Code, or made a false material representation under Section 78 of the same Code **that resulted in his certificate of candidacy being void *ab initio***, is determinative of whether Aratea or Antipolo is the rightful occupant to the Office of the Mayor of San Antonio, Zambales.

The dissenting opinions reverse the COMELEC's 2 February 2011 Resolution and 12 January 2011 Order. They hold that Aratea, the duly

¹⁹ Id. at 37-38. Citations omitted.

elected Vice-Mayor of San Antonio, Zambales, should be declared Mayor pursuant to the Local Government Code's rule on succession.

The dissenting opinions make three grave errors: *first*, they ignore prevailing jurisprudence that a false representation in the certificate of candidacy as to eligibility in the number of terms elected and served is a material fact that is a ground for a petition to cancel a certificate of candidacy under Section 78; *second*, they ignore that a false representation as to eligibility to run for public office due to the fact that the candidate suffers from perpetual *special disqualification* is a material fact that is a ground for a petition to cancel a certificate of candidacy under Section 78; and *third*, they resort to a strained statutory construction to conclude that the violation of the three-term limit rule cannot be a ground for cancellation of a certificate of candidacy under Section 78, even when it is clear and plain that violation of the three-term limit rule is an ineligibility affecting the qualification of a candidate to elective office.

The dissenting opinions tread on dangerous ground when they assert that a candidate's eligibility to the office he seeks election must be strictly construed to refer **only** to the details, i.e., age, citizenship, or residency, among others, which the law requires him to state in his COC, and which he must swear under oath to possess. The dissenting opinions choose to view a false certification of a candidate's eligibility on the three-term limit rule not as a ground for false material representation under Section 78 but as a ground for disqualification under Section 68 of the same Code. This is clearly contrary to well-established jurisprudence.

The Court's Ruling

We hold that Antipolo, the alleged “second placer,” should be proclaimed Mayor because Lonzanida’s certificate of candidacy was void *ab initio*. In short, Lonzanida was never a candidate at all. All votes for Lonzanida were stray votes. Thus, Antipolo, the only qualified candidate, actually garnered the highest number of votes for the position of Mayor.

Qualifications and Disqualifications

Section 65 of the Omnibus Election Code points to the Local Government Code for the qualifications of elective local officials. Paragraphs (a) and (c) of Section 39 and Section 40 of the Local Government Code provide in pertinent part:

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 x x x; 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.

x x x x

(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.

x x x x

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. (Emphasis supplied)

Section 12 of the Omnibus Election Code provides:

Sec. 12. *Disqualification.* — 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 was 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. (Emphasis supplied)

The grounds for disqualification for a petition under Section 68 of the Omnibus Election Code are specifically enumerated:

Sec. 68. *Disqualifications.* — Any candidate who, in an action or protest in which he is a party is declared by final decision by 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; (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, subparagraph 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. (Emphasis supplied)

A petition for disqualification under Section 68 clearly refers to “the commission of prohibited acts and possession of a permanent resident status in a foreign country.”²⁰ **All the offenses mentioned in Section 68 refer to election offenses under the Omnibus Election Code, not to violations of other penal laws.** There is absolutely nothing in the language of Section 68 that would justify including violation of the three-term limit rule, or conviction by final judgment of the crime of falsification under the Revised Penal Code, as one of the grounds or offenses covered under Section 68. In *Codilla, Sr. v. de Venecia*,²¹ this Court ruled:

[T]he jurisdiction of the COMELEC to disqualify candidates is limited to those enumerated in Section 68 of the Omnibus Election Code. All other election offenses are beyond the ambit of COMELEC jurisdiction. They are criminal and not administrative in nature. x x x

Clearly, the violation by Lonzanida of the three-term limit rule, or his conviction by final judgment of the crime of falsification under the Revised Penal Code, does not constitute a ground for a petition under Section 68.

False Material Representation

Section 78 of the Omnibus Election Code states that a certificate of candidacy may be denied or cancelled when there is **false material representation of the contents of the certificate of candidacy**:

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 the person **exclusively on the ground that any material representation contained therein as required**

²⁰ *Fermin v. Commission on Elections*, G.R. Nos. 179695 and 182369, 18 December 2008, 574 SCRA 782, 794-795.

²¹ 442 Phil. 139, 177-178 (2002).

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. (Emphasis supplied)

Section 74 of the Omnibus Election Code details **the contents of the certificate of candidacy**:

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.

x x x x (Emphasis supplied)

A candidate for mayor in the 2010 local elections was thus required to provide 12 items of information in the certificate of candidacy:²² name; nickname or stage name; gender; age; place of birth; political party that nominated the candidate; civil status; residence/address; profession or occupation; post office address for election purposes; locality of which the candidate is a registered voter; and period of residence in the Philippines before 10 May 2010. The candidate also certifies four statements: a statement that the candidate is a natural born or naturalized Filipino citizen; a statement that the candidate is not a permanent resident of, or immigrant to, a foreign country; **a statement that the candidate is eligible for the office he seeks election**; and a statement of the candidate's allegiance to the

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http://www.comelec.gov.ph/downloadables/COC%202010/forms_filling_candidacy/mayor.pdf (accessed 21 March 2012).

Constitution of the Republic of the Philippines.²³ The certificate of candidacy should also be **under oath**, and filed within the period prescribed by law.

The conviction of Lonzanida by final judgment, with the penalty of *prisión mayor*, **disqualifies him perpetually from holding any public office, or from being elected to any public office. This perpetual disqualification took effect upon the finality of the judgment of conviction, before Lonzanida filed his certificate of candidacy.** The pertinent provisions of the Revised Penal Code are as follows:

Art. 27. *Reclusion perpetua*. — x x x

Prisión mayor and temporary disqualification. — **The duration of the penalties of *prisión mayor* and temporary disqualification shall be from six years and one day to twelve years, except when the penalty of disqualification is imposed as an accessory penalty, in which case, it shall be that of the principal penalty.**

x x x x

Art. 30. *Effects of the penalties of perpetual or temporary absolute disqualification*. — The penalties of **perpetual or temporary absolute disqualification** for public office shall produce the following effects:

1. **The deprivation of the public offices and employments which the offender may have held, even if conferred by popular election.**
2. **The deprivation of the right to vote in any election for any popular elective office or to be elected to such office.**
3. **The disqualification for the offices or public employments and for the exercise of any of the rights mentioned.**

In case of temporary disqualification, such disqualification as is comprised in paragraphs 2 and 3 of this article shall last during the term of the sentence.

4. **The loss of all rights to retirement pay or other pension for any office formerly held.**

²³

I will support and defend the Constitution of the Republic of the Philippines and will maintain true faith and allegiance thereto. I will obey the laws, legal orders and decrees promulgated by the duly constituted authorities. I impose this obligation upon myself voluntarily, without mental reservation or purpose of evasion.

Art. 31. *Effects of the penalties of perpetual or temporary special disqualification.* — The penalties of **perpetual or temporary special disqualification for public office**, profession or calling shall produce the following effects:

1. **The deprivation of the office**, employment, profession or calling affected.
2. The disqualification for holding similar offices or employments either perpetually or during the term of the sentence, according to the extent of such disqualification.

Art. 32. *Effects of the penalties of perpetual or temporary special disqualification for the exercise of the right of suffrage.* — The **perpetual or temporary special disqualification for the exercise of the right of suffrage shall deprive the offender perpetually or during the term of the sentence**, according to the nature of said penalty, of the right to vote in any popular election for any public office or **to be elected to such office**. **Moreover, the offender shall not be permitted to hold any public office during the period of his disqualification.**

Art. 42. *Prisión mayor — Its accessory penalties.* — The penalty of prisión mayor shall carry with it that of **temporary absolute disqualification** and that of **perpetual special disqualification** from the right of suffrage which the offender shall suffer although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon. (Emphasis supplied)

The penalty of *prisión mayor* automatically carries with it, by operation of law,²⁴ the accessory penalties of temporary absolute disqualification and **perpetual special disqualification**. Under Article 30 of the Revised Penal Code, temporary absolute disqualification produces the effect of “deprivation of the right to vote in any election for any popular elective office *or to be elected to such office*.” The duration of temporary absolute disqualification is the same as that of the principal penalty of *prisión mayor*. On the other hand, under Article 32 of the Revised Penal Code, **perpetual special disqualification** means that “**the offender shall not be permitted to hold any public office during the period of his disqualification,**” *which is perpetually*. Both temporary absolute disqualification and perpetual special disqualification constitute

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People v. Silvallana, 61 Phil. 636 (1935).

ineligibilities to hold elective public office. **A person suffering from these ineligibilities is ineligible to run for elective public office, and commits a false material representation if he states in his certificate of candidacy that he is eligible to so run.**

In *Lacuna v. Abes (Lacuna)*,²⁵ the Court, speaking through Justice J.B.L. Reyes, explained the import of the accessory penalty of **perpetual special disqualification**:

On the first defense of respondent-appellee Abes, it must be remembered that appellee's conviction of a crime penalized with prisión mayor which carried the accessory penalties of temporary absolute disqualification and perpetual special disqualification from the right of suffrage (Article 42, Revised Penal Code); and Section 99 of the Revised Election Code disqualifies a person from voting if he had been sentenced by final judgment to suffer one year or more of imprisonment.

The accessory penalty of temporary absolute disqualification disqualifies the convict for public office and for the right to vote, such disqualification to last only during the term of the sentence (Article 27, paragraph 3, & Article 30, Revised Penal Code) that, in the case of Abes, would have expired on 13 October 1961.

But this does not hold true with respect to the other accessory penalty of perpetual special disqualification for the exercise of the right of suffrage. This accessory penalty deprives the convict of the right to vote or to be elected to or hold public office perpetually, as distinguished from temporary special disqualification, which lasts during the term of the sentence. Article 32, Revised Penal Code, provides:

Art. 32. *Effects of the penalties of perpetual or temporary special disqualification for the exercise of the right of suffrage.* — The perpetual or temporary special disqualification for the exercise of the right of suffrage shall deprive the offender perpetually or during the term of the sentence, according to the nature of said penalty, of the right to vote in any popular election for any public office or to be elected to such office. Moreover, the offender shall not be permitted to hold any public office during the period of disqualification.

The word "perpetually" and the phrase "during the term of the sentence" should be applied distributively to their respective antecedents; thus, the word "perpetually" refers to the perpetual kind of special disqualification,

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133 Phil. 770, 773-774 (1968).

while the phrase “during the term of the sentence” refers to the temporary special disqualification. The duration between the perpetual and the temporary (both special) are necessarily different because the provision, instead of merging their durations into one period, states that such duration is “according to the nature of said penalty” — which means according to whether the penalty is the perpetual or the temporary special disqualification. (Emphasis supplied)

Clearly, *Lacuna* instructs that the accessory penalty of perpetual special disqualification “**deprives the convict of the right to vote or to be elected to or hold public office perpetually.**”

The accessory penalty of perpetual special disqualification takes effect immediately once the judgment of conviction becomes final. The effectivity of this accessory penalty does not depend on the duration of the principal penalty, or on whether the convict serves his jail sentence or not. The last sentence of Article 32 states that “the offender shall not be permitted to hold any public office during the period of his [perpetual special] disqualification.” Once the judgment of conviction becomes final, it is immediately executory. Any public office that the convict may be holding at the time of his conviction becomes vacant upon finality of the judgment, and **the convict becomes ineligible to run for any elective public office perpetually.** *In the case of Lonzanida, he became ineligible perpetually to hold, or to run for, any elective public office from the time the judgment of conviction against him became final. The judgment of conviction was promulgated on 20 July 2009 and became final on 23 October 2009, before Lonzanida filed his certificate of candidacy on 1 December 2009.*²⁶

Perpetual special disqualification is a ground for a petition under Section 78 of the Omnibus Election Code because this accessory penalty is an **ineligibility**, which means that the convict is not eligible to run for public office, contrary to the statement that Section 74 requires him to state under oath in his certificate of candidacy. As this Court held in *Fermin v.*

²⁶*Rollo*, p. 66.

Commission on Elections,²⁷ the false material representation may refer to **“qualifications or eligibility.”** One who suffers from perpetual special disqualification is ineligible to run for public office. If a person suffering from perpetual special disqualification files a certificate of candidacy stating under oath that “he is eligible to run for (public) office,” **as expressly required under Section 74**, then he clearly makes a **false material representation** that is a ground for a petition under Section 78. As this Court explained in *Fermin*:

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 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.²⁸ (Emphasis supplied)

Latasa, Rivera and Ong:

The Three-Term Limit Rule as a Ground for Ineligibility

Section 74 requires the candidate to certify that he is **eligible for the public office** he seeks election. Thus, Section 74 states that **“the certificate of candidacy shall state that the person filing x x x is eligible for said office.”** The three-term limit rule, enacted to prevent the establishment of political dynasties and to enhance the electorate’s freedom of choice,²⁹ is found both in the Constitution³⁰ and the law.³¹ After being elected and

²⁷ Supra note 20.

²⁸ Id. at 792-794.

²⁹ See *Borja, Jr. v. Commission on Elections*, 356 Phil. 467 (1998).

³⁰ Text provided in note 1.

³¹ Text provided in note 2.

serving for three consecutive terms, an elective local official cannot seek immediate reelection for the same office in the next regular election³² because he is **ineligible**. One who has an ineligibility to run for elective public office is not “eligible for [the] office.” As used in Section 74, the word “eligible”³³ means having the right to run for elective public office, that is, having all the qualifications and none of the ineligibilities to run for the public office.

In *Latasa v. Commission on Elections*,³⁴ petitioner Arsenio Latasa was elected mayor of the Municipality of Digos, Davao del Sur in 1992, 1995, and 1998. The Municipality of Digos was converted into the City of Digos during Latasa’s third term. Latasa filed his certificate of candidacy for city mayor for the 2001 elections. Romeo Sunga, Latasa’s opponent, filed before the COMELEC a “petition to deny due course, cancel certificate of candidacy and/or disqualification” under Section 78 on the ground that Latasa falsely represented in his certificate of candidacy that he is eligible to run as mayor of Digos City. Latasa argued that he did not make any false representation. In his certificate of candidacy, Latasa inserted a footnote after the phrase “I am eligible” and indicated “*Having served three (3) term[s] as municipal mayor and now running for the first time as city mayor.” The COMELEC First Division cancelled Latasa’s certificate of candidacy for violation of the three-term limit rule but not for false material representation. This Court affirmed the COMELEC En Banc’s denial of Latasa’s motion for reconsideration.

We cancelled Marino Morales’ certificate of candidacy in *Rivera III v. Commission on Elections (Rivera)*.³⁵ We held that Morales exceeded the maximum three-term limit, having been elected and served as Mayor of

³² See *Socrates v. Commission on Elections*, 440 Phil. 106 (2002).

³³ The Oxford Dictionary of English (Oxford University Press 2010) defines the word “eligible” as “having a right to do or obtain something.”

³⁴ 463 Phil. 296 (2003).

³⁵ G.R. Nos. 167591 and 170577, 9 May 2007, 523 SCRA 41.

Mabalacat for four consecutive terms (1995 to 1998, 1998 to 2001, 2001 to 2004, and 2004 to 2007). We declared him ineligible as a candidate for the same position for the 2007 to 2010 term. Although we did not explicitly rule that Morales' violation of the three-term limit rule constituted false material representation, we nonetheless granted the petition to cancel Morales' certificate of candidacy under Section 78. We also affirmed the cancellation of Francis Ong's certificate of candidacy in *Ong v. Alegre*,³⁶ where the "petition to disqualify, deny due course and cancel" Ong's certificate of candidacy under Section 78 was predicated on the violation of the three-term limit rule.

*Loong, Fermin and Munder:
When Possession of a Disqualifying Condition
is Not a Ground for a Petition for Disqualification*

It is obvious from a reading of the laws and jurisprudence that there is an overlap in the grounds for eligibility and ineligibility *vis-a-vis* qualifications and disqualifications. For example, a candidate may represent that he is a resident of a particular Philippine locality³⁷ when he is actually a permanent resident of another country.³⁸ In cases of such overlap, the petitioner should not be constrained in his choice of remedy when the Omnibus Election Code explicitly makes available multiple remedies.³⁹ Section 78 allows the filing of a petition to deny due course or to cancel a certificate of candidacy before the election, while Section 253 allows the filing of a petition for quo warranto after the election. Despite the overlap of the grounds, one should not confuse a petition for disqualification using

³⁶ 515 Phil. 442 (2006).

³⁷ Under Section 39 of the Local Government Code, one of the "**qualifications**" for a local elective office is being "a resident therein for at least one (1) year immediately preceding the day of the election."

³⁸ Under Section 68 of the Omnibus Election Code, one of the "**disqualifications**" for a candidate is being "a permanent resident of or an immigrant to a foreign country."

³⁹ See discussion on the proceedings provided by the Omnibus Election Code in dealing with the qualifications of a candidate in *Salcedo II v. COMELEC*, 371 Phil. 377 (1999). See also *Aznar v. Commission on Elections*, 264 Phil. 307 (1990).

grounds enumerated in Section 68 with a petition to deny due course or to cancel a certificate of candidacy under Section 78.

The distinction between a petition under Section 68 and a petition under Section 78 was discussed in *Loong v. Commission on Elections*⁴⁰ with respect to the applicable prescriptive period. Respondent Nur Hussein Ututalum filed a petition under Section 78 to disqualify petitioner Benjamin Loong for the office of Regional Vice-Governor of the Autonomous Government of Muslim Mindanao for false representation as to his age. The petition was filed 16 days after the election, and clearly beyond the prescribed 25 day period from the last day of filing certificates of candidacy. This Court ruled that Ututalum's petition was one based on false representation under Section 78, and not for disqualification under Section 68. Hence, the 25-day prescriptive period provided in Section 78 should be strictly applied. We recognized the possible gap in the law:

It is true that the discovery of false representation as to material facts required to be stated in a certificate of candidacy, under Section 74 of the Code, may be made only after the lapse of the 25-day period prescribed by Section 78 of the Code, through no fault of the person who discovers such misrepresentations and who would want the disqualification of the candidate committing the misrepresentations. It would seem, therefore, that there could indeed be a gap between the time of the discovery of the misrepresentation, (when the discovery is made after the 25-day period under Sec. 78 of the Code has lapsed) and the time when the proclamation of the results of the election is made. During this so-called "gap" the would-be petitioner (who would seek the disqualification of the candidate) is left with nothing to do except to wait for the proclamation of the results, so that he could avail of a remedy against the misrepresenting candidate, that is, by filing a petition for quo warranto against him. Respondent Commission sees this "gap" in what it calls a procedural gap which, according to it, is unnecessary and should be remedied.

At the same time, it can not be denied that it is the purpose and intent of the legislative branch of the government to fix a definite time within which petitions of protests related to eligibility of candidates for elective offices must be filed, as seen in Sections 78 and 253 of the Code. Respondent Commission may have seen the need to remedy this so-called

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G.R. No. 93986, 22 December 1992, 216 SCRA 760.

“procedural gap”, but it is not for it to prescribe what the law does not provide, its function not being legislative. The question of whether the time to file these petitions or protests is too short or ineffective is one for the Legislature to decide and remedy.⁴¹

In *Fermin v. Commission on Elections*,⁴² the issue of a candidate’s possession of the required one-year residency requirement was raised in a petition for disqualification under Section 68 instead of a petition to deny due course or to cancel a certificate of candidacy under Section 78. Despite the question of the one-year residency being a proper ground under Section 78, Dilangalen, the petitioner before the COMELEC in *Fermin*, relied on Section 5(C)(1) and 5(C)(3)(a)(4) of COMELEC Resolution No. 7800⁴³ and filed the petition under Section 68. In *Fermin*, we ruled that “a COMELEC rule or resolution cannot supplant or vary legislative enactments that **distinguish the grounds for disqualification from those of ineligibility**, and the appropriate proceedings to raise the said grounds.”⁴⁴ A petition for disqualification can only be premised on a ground specified in Section 12 or

⁴¹ Id. at 768-769.

⁴² Supra note 20.

⁴³ Sec. 5. Procedure in filing petitions.—For purposes of the preceding section, the following procedure shall be observed:

x x x x

C. PETITION TO DISQUALIFY A CANDIDATE PURSUANT TO SEC. 68 OF THE OMNIBUS ELECTION CODE AND PETITION TO DISQUALIFY FOR LACK OF QUALIFICATIONS OR POSSESSING SOME GROUNDS FOR DISQUALIFICATION

1) A verified petition to disqualify a candidate pursuant to Sec. 68 of the OEC and the verified petition to disqualify a candidate for lack of qualifications or possessing some grounds for disqualification may be filed on any day after the last day for filing of certificates of candidacy but not later than the date of proclamation.

x x x x

3) The petition to disqualify a candidate for lack of qualification or possessing some grounds for disqualification, shall be filed in ten (10) legible copies with the concerned office mentioned in Sec. 3 hereof, personally or through a duly authorized representative by any person of voting age, or duly registered political party, organization or coalition of political parties on the grounds that any candidate does not possess all the qualifications of a candidate as provided for by the constitution or by existing law, or who possesses some grounds for disqualification.

3.a. Disqualification under existing election laws:

1. For not being a citizen of the Philippines;
2. For being a permanent resident of or an immigrant to a foreign country;
3. For lack of the required age;
4. For lack of residence;
5. For not being a registered voter;
6. For not being able to read and write;
7. In case of a party-list nominee, for not being a bona fide member of the party or organization which he seeks to represent for at least ninety (90) days immediately preceding the day of the election.

⁴⁴ Supra note 20 at 798.

68 of the Omnibus Election Code or Section 40 of the Local Government Code. Thus, a petition questioning a candidate's possession of the required one-year residency requirement, as distinguished from permanent residency or immigrant status in a foreign country, should be filed under Section 78, and a petition under Section 68 is the wrong remedy.

In *Munder v. Commission on Elections*,⁴⁵ petitioner Alfais Munder filed a certificate of candidacy for Mayor of Bubong, Lanao del Sur on 26 November 2009. Respondent Atty. Tago Sarip filed a petition for Munder's disqualification on 13 April 2010. Sarip claimed that Munder misrepresented that he was a registered voter of Bubong, Lanao del Sur, and that he was eligible to register as a voter in 2003 even though he was not yet 18 years of age at the time of the voter's registration. Moreover, Munder's certificate of candidacy was not accomplished in full as he failed to indicate his precinct and did not affix his thumb-mark. The COMELEC Second Division dismissed Sarip's petition and declared that his grounds are not grounds for disqualification under Section 68 but for denial or cancellation of Munder's certificate of candidacy under Section 78. Sarip's petition was filed out of time as he had only 25 days after the filing of Munder's certificate of candidacy, or until 21 December 2009, within which to file his petition.

The COMELEC En Banc, however, disqualified Munder. In reversing the COMELEC Second Division, the COMELEC En Banc did not rule on the propriety of Sarip's remedy but focused on the question of whether Munder was a registered voter of Bubong, Lanao del Sur. This Court reinstated the COMELEC Second Division's resolution. This Court ruled that the ground raised in the petition, lack of registration as voter in the locality where he was running as a candidate, is inappropriate for a petition for disqualification. We further declared that with our ruling in *Fermin*, we

⁴⁵ G.R. Nos. 194076 and 194160, 19 October 2011, 659 SCRA 256.

had already rejected the claim that lack of substantive qualifications of a candidate is a ground for a petition for disqualification under Section 68. The only substantive qualification the absence of which is a ground for a petition under Section 68 is the candidate's permanent residency or immigrant status in a foreign country.

The dissenting opinions place the violation of the three-term limit rule as a disqualification under Section 68 as the violation allegedly is "a status, circumstance or condition which bars him from running for public office despite the possession of all the qualifications under Section 39 of the [Local Government Code]." In so holding the dissenting opinions write in the law what is not found in the law. Section 68 is explicit as to the proper grounds for disqualification under said Section. The grounds for filing a petition for disqualification under Section 68 are specifically enumerated in said Section. However, contrary to the specific enumeration in Section 68 and contrary to prevailing jurisprudence, the dissenting opinions add to the enumerated grounds the violation of the three-term limit rule and falsification under the Revised Penal Code, which are obviously not found in the enumeration in Section 68.

The dissenting opinions equate Lonzanida's possession of a disqualifying condition (violation of the three-term limit rule) with the grounds for disqualification under Section 68. Section 68 is explicit as to the proper grounds for disqualification: the commission of specific prohibited acts under the Omnibus Election Code and possession of a permanent residency or immigrant status in a foreign country. Any other false representation regarding a material fact should be filed under Section 78, specifically under the candidate's certification of his eligibility. In rejecting a violation of the three-term limit as a condition for eligibility, the dissenting opinions resort to judicial legislation, ignoring the *verba legis*

doctrine and well-established jurisprudence on this very issue.

In a certificate of candidacy, the candidate is asked to certify under oath his eligibility, and thus qualification, to the office he seeks election. Even though the certificate of candidacy does not specifically ask the candidate for the number of terms elected and served in an elective position, such fact is material in determining a candidate's eligibility, and thus qualification for the office. Election to and service of the same local elective position for three consecutive terms renders a candidate ineligible from running for the same position in the succeeding elections. Lonzanida misrepresented his eligibility because he knew full well that he had been elected, and had served, as mayor of San Antonio, Zambales for more than three consecutive terms yet he still certified that he was eligible to run for mayor for the next succeeding term. Thus, Lonzanida's representation that he was eligible for the office that he sought election constitutes false material representation as to his qualification or eligibility for the office.

*Legal Duty of COMELEC
to Enforce Perpetual Special Disqualification*

Even without a petition under Section 78 of the Omnibus Election Code, the COMELEC is under a legal duty to cancel the certificate of candidacy of anyone suffering from perpetual special disqualification to run for public office by virtue of a final judgment of conviction. The final judgment of conviction is judicial notice to the COMELEC of the disqualification of the convict from running for public office. The law itself bars the convict from running for public office, and the disqualification is part of the final judgment of conviction. The final judgment of the court is addressed not only to the Executive branch, but also to other government agencies tasked to implement the final judgment under the law.

Whether or not the COMELEC is expressly mentioned in the judgment to implement the disqualification, it is assumed that the portion of the final judgment on disqualification to run for elective public office is addressed to the COMELEC because under the Constitution the COMELEC is duty bound to “**enforce and administer all laws and regulations** relative to the conduct of an election.”⁴⁶ The disqualification of a convict to run for elective public office under the Revised Penal Code, as affirmed by final judgment of a competent court, is part of the **enforcement and administration** of “all the laws” relating to the conduct of elections.

Effect of a Void Certificate of Candidacy

A cancelled certificate of candidacy void *ab initio* cannot give rise to a valid candidacy, and much less to valid votes.⁴⁷ We quote from the COMELEC’s 2 February 2011 Resolution with approval:

As early as February 18, 2010, the Commission speaking through the Second Division had already ordered the cancellation of Lonzanida’s certificate of candidacy, and had stricken off his name in the list of official candidates for the mayoralty post of San Antonio, Zambales. Thereafter, the Commission En Banc in its resolution dated August 11, 2010 unanimously affirmed the resolution disqualifying Lonzanida. Our findings were likewise sustained by the Supreme Court no less. The disqualification of Lonzanida is not simply anchored on one ground. On the contrary, it was emphasized in our En Banc resolution that Lonzanida’s disqualification is two-pronged: first, he violated the constitutional fiat on the three-term limit; and second, as early as December 1, 2009, he is known to have been convicted by final judgment for ten (10) counts of Falsification under Article 171 of the Revised Penal Code. In other words, on election day, respondent Lonzanida’s disqualification is notoriously known in fact and in law. *Ergo, since respondent Lonzanida was **never a candidate** for the position of Mayor [of] San Antonio, Zambales, the votes cast for him should be considered stray votes.* Consequently, Intervenor Antipolo, who remains as the sole qualified candidate for the mayoralty post and obtained the highest number of votes, should now be proclaimed as the duly elected Mayor of San Antonio, Zambales.⁴⁸ (Boldfacing and underscoring in the original; italicization supplied)

⁴⁶ Section 2(1), Article IX-C, 1987 Constitution.

⁴⁷ *Bautista v. Commission on Elections*, 359 Phil. 1, 16 (1998). See *Miranda v. Abaya*, 370 Phil. 642 (1999); *Gador v. Commission on Elections*, 184 Phil. 395 (1980).

⁴⁸ *Rollo*, p. 37.

Lonzanida's certificate of candidacy was cancelled because he was ineligible or not qualified to run for Mayor. Whether his certificate of candidacy is cancelled before or after the elections is immaterial because the cancellation on such ground means he was never a candidate from the very beginning, his certificate of candidacy being void *ab initio*. There was only one qualified candidate for Mayor in the May 2010 elections – Antipolo, who therefore received the highest number of votes.

WHEREFORE, the petition is **DISMISSED**. The Resolution dated 2 February 2011 and the Order dated 12 January 2011 of the COMELEC En Banc in SPA No. 09-158 (DC) are **AFFIRMED**. The COMELEC En Banc is **DIRECTED** to constitute a Special Municipal Board of Canvassers to proclaim Estela D. Antipolo as the duly elected Mayor of San Antonio, Zambales. Petitioner Efren Racel Aratea is **ORDERED** to cease and desist from discharging the functions of the Office of the Mayor of San Antonio, Zambales.

SO ORDERED.



ANTONIO T. CARPIO

Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO

Chief Justice

I join the dissent of J.B. Reyes

PRESBITERO J. VELASCO, JR.

Associate Justice

See my Dissent.

Arturo D. Brion

ARTURO D. BRION

Associate Justice

Teresito Leonardo de Castro

TERESITA J. LEONARDO-

DE CASTRO

Associate Justice

Diosdado M. Peralta

DIOSDADO M. PERALTA

Associate Justice

Lucas P. Bersamin

LUCAS P. BERSAMIN

Associate Justice

Mariano C. Del Castillo

MARIANO C. DEL CASTILLO

Associate Justice

Roberto A. Abad

ROBERTO A. ABAD

Associate Justice

Martin S. Villarama, Jr.

MARTIN S. VILLARAMA, JR.

Associate Justice

Jose Portugal Perez

JOSE PORTUGAL PEREZ

Associate Justice

Jose C. Mendoza

JOSE C. MENDOZA

Associate Justice

with dissenting position.

Bienvenido L. Reyes

BIENVENIDO L. REYES

Associate Justice

Estela M. Perlas-Bernabe

ESTELA M. PERLAS-BERNABE

Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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