



Republic of the Philippines
Supreme Court
Manila

EN BANC

**MAYOR BARBARA RUBY C.
TALAGA,**

Petitioner,

G.R. No. 196804

- versus -

**COMMISSION ON ELECTIONS
and RODERICK A. ALCALA,**
Respondents.

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PHILIP M. CASTILLO,
Petitioner,

G.R. No. 197015

Present:

- versus -

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

**COMMISSION ON ELECTIONS,
BARBARA RUBY TALAGA and
RODERICK A. ALCALA,**
Respondents.

Promulgated:

OCTOBER 09, 2012



x-----x

D E C I S I O N

BERSAMIN, J.:

In focus in these consolidated special civil actions are the disqualification of a substitute who was proclaimed the winner of a mayoralty election; and the ascertainment of who should assume the office following the substitute's disqualification.

The consolidated petitions for *certiorari* seek to annul and set aside the *En Banc* Resolution issued on May 20, 2011 in SPC No. 10-024 by the Commission on Elections (COMELEC), the dispositive portion of which states:

WHEREFORE, judgment is hereby rendered:

1. REVERSING and SETTING ASIDE the January 11, 2011 Resolution of the Second Division;
2. GRANTING the petition in intervention of Roderick A. Alcala;
3. ANNULING the election and proclamation of respondent Barbara C. Talaga as mayor of Lucena City and CANCELLING the Certificate of Canvass and Proclamation issued therefor;
4. Ordering respondent Barbara Ruby Talaga to cease and desist from discharging the functions of the Office of the Mayor;
5. In view of the permanent vacancy in the Office of the Mayor of Lucena City, the proclaimed Vice-Mayor is ORDERED to succeed as Mayor as provided under Section 44 of the Local Government Code;
6. DIRECTING the Clerk of Court of the Commission to furnish copies of this Resolution to the Office of the President of the Philippines, the Department of Interior and Local Government, the Department of Finance and the Secretary of the Sangguniang Panglunsod of Lucena City.

Let the Department of Interior and Local Government and the Regional Election Director of Region IV of COMELEC implement this resolution.

SO ORDERED.¹

Antecedents

On November 26, 2009 and December 1, 2009, Ramon Talaga (Ramon) and Philip M. Castillo (Castillo) respectively filed their certificates of candidacy (CoCs) for the position of Mayor of Lucena City to be contested in the scheduled May 10, 2010 national and local elections.² Ramon, the official candidate of the Lakas-Kampi-CMD,³ declared in his CoC that he was eligible for the office he was seeking to be elected to.

Four days later, or on December 5, 2009, Castillo filed with the COMELEC a petition denominated as *In the Matter of the Petition to Deny Due Course to or Cancel Certificate of Candidacy of Ramon Y. Talaga, Jr. as Mayor for Having Already Served Three (3) Consecutive Terms as a City Mayor of Lucena*, which was docketed as SPA 09-029 (DC).⁴ He alleged therein that Ramon, despite knowing that he had been elected and had served three consecutive terms as Mayor of Lucena City, still filed his CoC for Mayor of Lucena City in the May 10, 2010 national and local elections.

The pertinent portions of Castillo's petition follow:

1. Petitioner is of legal age, Filipino, married, and a resident of Barangay Mayao Crossing, Lucena City but may be served with summons and other processes of this Commission at the address of his counsel at 624 Aurora Blvd., Lucena City 4301;

2. Respondent Ramon Y. Talaga, Jr. is likewise of legal age, married, and a resident of Barangay Ibabang Iyam, Lucena City and with postal address at the Office of the City Mayor, City Hall, Lucena City, where he may be served with summons and other processes of this Commission;

¹ *Rollo* (G.R. No. 196804), pp. 50-51.

² *Id.* at 94, 96.

³ *Id.* at 221.

⁴ *Id.* at 88.

3. Petitioner, the incumbent city vice-mayor of Lucena having been elected during the 2007 local elections, is running for city mayor of Lucena under the Liberal party this coming 10 May 2010 local elections and has filed his certificate of candidacy for city mayor of Lucena;

4. Respondent was successively elected mayor of Lucena City in 2001, 2004, and 2007 local elections based on the records of the Commission on Elections of Lucena City and had fully served the aforesaid three (3) terms without any voluntary and involuntary interruption;

5. Except the preventive suspension imposed upon him from 13 October 2005 to 14 November 2005 and from 4 September 2009 to 30 October 2009 pursuant to Sandiganbayan 4th Division Resolution in Criminal Case No. 27738 dated 3 October 2005, the public service as city mayor of the respondent is continuous and uninterrupted under the existing laws and jurisprudence;

6. There is no law nor jurisprudence to justify the filing of the certificate of candidacy of the respondent, hence, such act is outrightly unconstitutional, illegal, and highly immoral;

7. Respondent, knowing well that he was elected for and had fully served three (3) consecutive terms as a city mayor of Lucena, he still filed his Certificate of Candidacy for City Mayor of Lucena for this coming 10 May 2010 national and local elections;

8. Under the Constitution and existing Election Laws, New Local Government Code of the Philippines, and jurisprudence the respondent is no longer entitled and is already disqualified to be a city mayor for the fourth consecutive term;

9. The filing of the respondent for the position of city mayor is highly improper, unlawful and is potentially injurious and prejudicial to taxpayers of the City of Lucena; and

10. It is most respectfully prayed by the petitioner that the respondent be declared disqualified and no longer entitled to run in public office as city mayor of Lucena City based on the existing law and jurisprudence.⁵

The petition prayed for the following reliefs, to wit:

WHEREFORE, premises considered, it is respectfully prayed that **the Certificate of Candidacy filed by the respondent be denied due course to or cancel the same** and that he be **declared as a disqualified candidate** under the existing Election Laws and by the provisions of the New Local Government Code.⁶ (Emphasis supplied.)

⁵ Id. at 88-91.

⁶ Id. at 91.

Ramon countered that that the Sandiganbayan had preventively suspended him from office during his second and third terms; and that the three-term limit rule did not then apply to him pursuant to the prevailing jurisprudence⁷ to the effect that an involuntary separation from office amounted to an interruption of continuity of service for purposes of the application of the three-term limit rule.

In the meantime, on December 23, 2009, the Court promulgated the ruling in *Aldovino, Jr. v. Commission on Elections*,⁸ holding that preventive suspension, being a mere temporary incapacity, was not a valid ground for avoiding the effect of the three-term limit rule. Thus, on December 30, 2009, Ramon filed in the COMELEC a Manifestation with Motion to Resolve, taking into account the intervening ruling in *Aldovino*. Relevant portions of his Manifestation with Motion to Resolve are quoted herein, *viz*:

4. When respondent filed his certificate of candidacy for the position of Mayor of Lucena City, the rule that ‘*where the separation from office is caused by reasons beyond the control of the officer – i.e. involuntary – the service of term is deemed interrupted*’ has not yet been overturned by the new ruling of the Supreme Court. As a matter of fact, the prevailing rule then of the Honorable Commission in [sic] respect of the three (3)-term limitation was its decision in the case of *Aldovino, et al. vs. Asilo* where it stated:

“Thus, even if respondent was elected during the 2004 elections, which was supposedly his third and final term as city councilor, **the same cannot be treated as a complete service or full term in office since the same was interrupted when he was suspended by the Sandiganbayan Fourth Division.** And the respondent actually heeded the suspension order since he did not receive his salary during the period October 16-31 and November 1-15 by reason of his actual suspension from office. And this was further bolstered by the fact that the DILG issued a Memorandum directing him, among others, to reassume his position.” (Emphasis supplied.)

5. Clearly, there was no misrepresentation on the part of respondent as would constitute a ground for the denial of due course to and/or the cancellation of respondent’s certificate of candidacy at the time

⁷ *Montebon v. Commission on Elections*, G.R. No. 180444, April 9, 2008, 551 SCRA 50, 56.; *Lonzanida v. Commission on Elections*, G.R. No. 135150, July 28, 1999, 311 SCRA 602, 613; *Borja, Jr. v. Commission on Elections*, G.R. No. 133495, September 3, 1998, 295 SCRA 157.

⁸ G.R. No. 184836, December 23, 2009, 609 SCRA 234, 263-264.

he filed the same. Petitioner's ground for the denial of due course to and/or the cancellation of respondent's certificate of candidacy thus has no basis, in fact and in law, as there is no ground to warrant such relief under the Omnibus Election Code and/or its implementing laws.

6. Pursuant, however, to the new ruling of the Supreme Court in respect of the issue on the three (3)-term limitation, respondent acknowledges that he is now **DISQUALIFIED** to run for the position of Mayor of Lucena City having served three (3) (albeit interrupted) terms as Mayor of Lucena City prior to the filing of his certificate of candidacy for the 2010 elections.

7. In view of the foregoing premises and new jurisprudence on the matter, respondent respectfully submits the present case for decision declaring him as **DISQUALIFIED** to run for the position of Mayor of Lucena City.⁹

Notwithstanding his express recognition of his disqualification to run as Mayor of Lucena City in the May 10, 2010 national and local elections, Ramon did not withdraw his CoC.

Acting on Ramon's Manifestation with Motion to Resolve, the COMELEC First Division issued a Resolution on April 19, 2010,¹⁰ disposing as follows:

WHEREFORE, premises considered, the instant Petition is hereby **GRANTED**. Accordingly, Ramon Y. Talaga, Jr. is hereby declared **DISQUALIFIED** to run for Mayor of Lucena City for the 10 May 2010 National and Local Elections.

SO ORDERED.

Initially, Ramon filed his Verified Motion for Reconsideration against the April 19, 2010 Resolution of the COMELEC First Division.¹¹ Later on, however, he filed at 9:00 a.m. of May 4, 2010 an *Ex-parte* Manifestation of Withdrawal of the Pending Motion for Reconsideration.¹² At 4:30 p.m. on the same date, Barbara Ruby filed her own CoC for Mayor of Lucena City in substitution of Ramon, attaching thereto the Certificate of Nomination and

⁹ *Rollo* (G.R. No. 196804), pp. 99-100.

¹⁰ *Id.* at 102-105.

¹¹ *Id.* at 106-125.

¹² *Id.* at 126-129.

Acceptance (CONA) issued by Lakas-Kampi-CMD, the party that had nominated Ramon.¹³

On May 5, 2010, the COMELEC *En Banc*, acting on Ramon's *Ex parte* Manifestation of Withdrawal, declared the COMELEC First Division's Resolution dated April 19, 2010 final and executory.¹⁴

On election day on May 10, 2010, the name of Ramon remained printed on the ballots but the votes cast in his favor were counted in favor of Barbara Ruby as his substitute candidate, resulting in Barbara Ruby being ultimately credited with 44,099 votes as against Castillo's 39,615 votes.¹⁵

Castillo promptly filed a petition in the City Board of Canvassers (CBOC) seeking the suspension of Barbara Ruby's proclamation.¹⁶

It was only on May 13, 2010 when the COMELEC *En Banc*, upon the recommendation of its Law Department,¹⁷ gave due course to Barbara Ruby's CoC and CONA through Resolution No. 8917, thereby including her in the certified list of candidates.¹⁸ Consequently, the CBOC proclaimed Barbara Ruby as the newly-elected Mayor of Lucena City.¹⁹

On May 20, 2010, Castillo filed a Petition for Annulment of Proclamation with the COMELEC,²⁰ docketed as SPC 10-024. He alleged that Barbara Ruby could not substitute Ramon because his CoC had been cancelled and denied due course; and Barbara Ruby could not be considered a candidate because the COMELEC *En Banc* had approved her substitution three days after the elections; hence, the votes cast for Ramon should be considered stray.

¹³ Id. at 130-131.

¹⁴ Id. at 133-134.

¹⁵ Id. at 140

¹⁶ Id. at 135-139.

¹⁷ Id. at 179.

¹⁸ Id. at 142-144

¹⁹ Id. at 145

²⁰ Id. at 185-217.

In her Comment on the Petition for Annulment of Proclamation,²¹ Barbara Ruby maintained the validity of her substitution. She countered that the COMELEC *En Banc* did not deny due course to or cancel Ramon's COC, despite a declaration of his disqualification, because there was no finding that he had committed misrepresentation, the ground for the denial of due course to or cancellation of his COC. She prayed that with her valid substitution, Section 12 of Republic Act No. 9006²² applied, based on which the votes cast for Ramon were properly counted in her favor.

On July 26, 2010, Roderick Alcala (Alcala), the duly-elected Vice Mayor of Lucena City, sought to intervene,²³ positing that he should assume the post of Mayor because Barbara Ruby's substitution had been invalid and Castillo had clearly lost the elections.

On January 11, 2011, the COMELEC Second Division dismissed Castillo's petition and Alcala's petition-in-intervention,²⁴ holding:

In the present case, Castillo was notified of Resolution 8917 on May 13, 2010 as it was the basis for the proclamation of Ruby on that date. He, however, failed to file any action within the prescribed period either in the Commission or the Supreme Court assailing the said resolution. Thus, the said resolution has become final and executory. It cannot anymore be altered or reversed.

x x x x

x x x. A close perusal of the petition filed by Castillo in SPA 10-029 (Dc) shows that it was actually for the disqualification of Ramon for having served three consecutive terms, which is a ground for his disqualification under the Constitution in relation to Section 4(b)3 of Resolution 8696. There was no mention therein that Ramon has committed material representation that would be a ground for the cancellation or denial of due course to the CoC of Ramon under Section 78 of the Omnibus Election Code. The First Division, in fact, treated the petition as one for disqualification as gleaned from the body of the resolution and its dispositive portion quoted above. This treatment of the First Division of the petition as one for disqualification only is affirmed by the fact that its members signed Resolution No. 8917 where it was clearly stated that the First Division only disqualified Ramon.

²¹ Id. at 283-298.

²² Section 12. *Substitution of candidates.* – In case of valid substitutions after the official ballots have been printed, the votes cast for the substituted candidates shall be considered votes for the substitutes.

²³ *Rollo* (G.R. No. 196804), pp. 305-320.

²⁴ Id. at 79.

Having been disqualified only, the doctrine laid down in *Miranda v. Abaya* is not applicable. Ramon was rightly substituted by Ruby. As such, the votes for Ramon cannot be considered as stray votes but should be counted in favor of Ruby since the substituted and the substitute carry the same surname – Talaga, as provided in Section 12 of Republic Act No. 9006.

x x x x

Moreover, there is no provision in the Omnibus Election Code or any election laws for that matter which requires that the substitution and the Certificate of Candidacy of the substitute should be approved and given due course first by the Commission or the Law Department before it can be considered as effective. All that Section 77 of the Omnibus Election Code as implemented by Section 13 of Resolution No. 8678 requires is that it should be filed with the proper office. The respondent is correct when she argued that in fact even the BEI can receive a CoC of a substitute candidate in case the cause for the substitution happened between the day before the election and mid-day of election day. Thus, even if the approval of the substitution was made after the election, the substitution became effective on the date of the filing of the CoC with the Certificate of Nomination and Acceptance.

There being no irregularity in the substitution by Ruby of Ramon as candidate for mayor of Lucena City, the counting of the votes of Ramon in favor of Ruby is proper. The proclamation, thus, of Ruby as mayor elect of Lucena City is in order. Hence, we find no cogent reason to annul the proclamation of respondent Barbara Ruby C. Talaga as the duly elected Mayor of the City of Lucena after the elections conducted on May 10, 2010.²⁵

Acting on Castillo and Alcala's respective motions for reconsideration, the COMELEC *En Banc* issued the assailed Resolution dated May 20, 2011 reversing the COMELEC Second Division's ruling.²⁶ Pointing out that: (a) Resolution No. 8917 did not attain finality for being issued without a hearing as a mere incident of the COMELEC's ministerial duty to receive the COCs of substitute candidates; (b) Resolution No. 8917 was based on the wrong facts; and (c) Ramon's disqualification was resolved with finality only on May 5, 2010, the COMELEC *En Banc* concluded that Barbara Ruby could not have properly substituted Ramon but had simply become an additional candidate who had filed her COC out of time; and held that Vice Mayor Alcala should succeed to the position pursuant to Section 44 of the Local Government Code (LGC).²⁷

²⁵ Id. at 75-78.

²⁶ Id. at 50-51.

²⁷ Section 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

Issues

The core issue involves the validity of the substitution by Barbara Ruby as candidate for the position of Mayor of Lucena City in lieu of Ramon, her husband.

Ancillary to the core issue is the determination of who among the contending parties should assume the contested elective position.

Ruling

The petitions lack merit.

1.

Existence of a valid CoC is a condition *sine qua non* for a valid substitution

The filing of a CoC within the period provided by law is a mandatory requirement for any person to be considered a candidate in a national or local election. This is clear from Section 73 of the *Omnibus Election Code*, to wit:

Section 73. *Certificate of candidacy* — No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed herein.

Section 74 of the *Omnibus Election Code* specifies the contents of a COC, viz:

Section 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

The evident purposes of the requirement for the filing of CoCs and in fixing the time limit for filing them are, namely: (a) to enable the voters to know, at least 60 days prior to the regular election, the candidates from among whom they are to make the choice; and (b) to avoid confusion and inconvenience in the tabulation of the votes cast. If the law does not confine to the duly-registered candidates the choice by the voters, there may be as many persons voted for as there are voters, and votes may be cast even for unknown or fictitious persons as a mark to identify the votes in favor of a candidate for another office in the same election.²⁸ Moreover, according to *Sinaca v. Mula*,²⁹ the CoC is:

x x x in the nature of a formal manifestation to the whole world of the candidate's political creed or lack of political creed. It is a statement of a person seeking to run for a public office certifying that he announces his candidacy for the office mentioned and that he is eligible for the office, the name of the political party to which he belongs, if he belongs to any, and his post-office address for all election purposes being as well stated.

Accordingly, a person's declaration of his intention to run for public office and his affirmation that he possesses the eligibility for the position he seeks to assume, followed by the timely filing of such declaration, constitute a valid CoC that render the person making the declaration a valid or official candidate.

There are two remedies available to prevent a candidate from running in an electoral race. One is through a petition for disqualification and the other through a petition to deny due course to or cancel a certificate of candidacy. The Court differentiated the two remedies in *Fermin v. Commission on Elections*,³⁰ thuswise:

²⁸ *Miranda v. Abaya*, G.R. No. 136351, July 28, 1999, 311 SCRA 617, 625.

²⁹ G.R. No. 135691, September 27, 1999, 315 SCRA 266, 276.

³⁰ G.R. No. 179695, December 18, 2008, 574 SCRA 782.

x x x [A] petition for disqualification, on the one hand, can be premised on Section 12 or 68 of the [Omnibus Election Code], or Section 40 of the [Local Government Code]. 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.³¹

Inasmuch as the grounds for disqualification under Section 68 of the *Omnibus Election Code* (i.e., prohibited acts of candidates, and the fact of a candidate's permanent residency in another country when that fact affects the residency requirement of a candidate) are separate and distinct from the grounds for the cancellation of or denying due course to a CoC (i.e., nuisance candidates under Section 69 of the *Omnibus Election Code*; and material misrepresentation under Section 78 of the *Omnibus Election Code*), the Court has recognized in *Miranda v. Abaya*³² that the following circumstances may result from the granting of the petitions, to wit:

- (1) A candidate may not be qualified to run for election but may have filed a valid CoC;
- (2) A candidate may not be qualified and at the same time may not have filed a valid CoC; and
- (3) A candidate may be qualified but his CoC may be denied due course or cancelled.

In the event that a candidate is disqualified to run for a public office, or dies, or withdraws his CoC before the elections, Section 77 of the *Omnibus Election Code* provides the option of substitution, to wit:

Section 77. *Candidates in case of death, disqualification or withdrawal.* — If after the last day for the filing of certificates of candidacy, **an official candidate** of a registered or accredited political party **dies, withdraws or is disqualified for any cause, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified.** The substitute candidate nominated by the political

³¹ Id. at 794-796.

³² *Supra* note 28, at 627.

party concerned may file his certificate of candidacy for the office affected in accordance with the preceding sections not later than mid-day of the day of the election. If the death, withdrawal or disqualification should occur between the day before the election and mid-day of election day, said certificate may be filed with any board of election inspectors in the political subdivision where he is a candidate, or, in the case of candidates to be voted for by the entire electorate of the country, with the Commission.

Nonetheless, whether the ground for substitution is death, withdrawal or disqualification of a candidate, Section 77 of the *Omnibus Election Code* unequivocally states that only an official candidate of a registered or accredited party may be substituted.

Considering that a cancelled CoC does not give rise to a valid candidacy,³³ there can be no valid substitution of the candidate under Section 77 of the *Omnibus Election Code*. It should be clear, too, that a candidate who does not file a valid CoC may not be validly substituted, because a person without a valid CoC is not considered a candidate in much the same way as any person who has not filed a CoC is not at all a candidate.³⁴

Likewise, a candidate who has not withdrawn his CoC in accordance with Section 73 of the *Omnibus Election Code* may not be substituted. A withdrawal of candidacy can only give effect to a substitution if the substitute candidate submits prior to the election a sworn CoC as required by Section 73 of the *Omnibus Election Code*.³⁵

2.

Declaration of Ramon's disqualification rendered his CoC invalid; hence, he was not a valid candidate to be properly substituted

In the light of the foregoing rules on the CoC, the Court concurs with the conclusion of the COMELEC *En Banc* that the Castillo petition in SPA

³³ *Bautista v. Commission on Elections*, G.R. No. 133840, November 13, 1998, 298 SCRA 480, 493.

³⁴ *Miranda v. Abaya*, *supra* note 28, at 626-627.

³⁵ *Luna v. Commission on Elections*, G.R. No. 165983, April 24, 2007, 522 SCRA 107, 115.

09-029 (DC) was in the nature of a petition to deny due course to or cancel a CoC under Section 78 of the *Omnibus Election Code*.

In describing the nature of a Section 78 petition, the Court said in *Fermin v. Commission on Elections*:³⁶

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.

Castillo’s petition contained essential allegations pertaining to a Section 78 petition, namely: (a) Ramon made a false representation in his CoC; (b) the false representation referred to a material matter that would affect the substantive right of Ramon as candidate (that is, the right to run for the election for which he filed his certificate); and (c) Ramon made the false representation with the intention to deceive the electorate as to his qualification for public office or deliberately attempted to mislead, misinform, or hide a fact that would otherwise render him ineligible.³⁷ The petition expressly challenged Ramon’s eligibility for public office based on the prohibition stated in the Constitution and the *Local Government Code* against any person serving three consecutive terms, and specifically prayed that “the Certificate of Candidacy filed by the respondent [Ramon] be denied due course to or cancel the same and that he be declared as a disqualified candidate.”³⁸

³⁶ *Supra* note 30, at 792-794 (bold emphases and underscoring are part of the original text).

³⁷ *Salcedo II v. Commission on Elections*, G.R. No. 135886, August 16, 1999, 312 SCRA 447, 455.

³⁸ *Rollo* (G.R. No. 196804), p. 91.

The denial of due course to or the cancellation of the CoC under Section 78 involves a finding not only that a person lacks a qualification but also that he made a material representation that is false.³⁹ A petition for the denial of due course to or cancellation of CoC that is short of the requirements will not be granted. In *Mitra v. Commission on Elections*,⁴⁰ the Court stressed that there must also be a deliberate attempt to mislead, thus:

The false representation under Section 78 must likewise be a “deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible.” Given the purpose of the requirement, it must be made with the intention to deceive the electorate as to the would-be candidate’s qualifications for public office. Thus, the misrepresentation that Section 78 addresses cannot be the result of a mere innocuous mistake, and cannot exist in a situation where the intent to deceive is patently absent, or where no deception on the electorate results. The deliberate character of the misrepresentation necessarily follows from a consideration of the consequences of any material falsity: a candidate who falsifies a material fact cannot run; if he runs and is elected, he cannot serve; in both cases, he can be prosecuted for violation of the election laws.

It is underscored, however, that a Section 78 petition should not be interchanged or confused with a Section 68 petition. The remedies under the two sections are different, for they are based on different grounds, and can result in different eventualities.⁴¹ A person who is disqualified under Section 68 is prohibited to continue as a candidate, but a person whose CoC is cancelled or denied due course under Section 78 is not considered as a candidate at all because his status is that of a person who has not filed a CoC.⁴² *Miranda v. Abaya*⁴³ has clarified that a candidate who is disqualified under Section 68 can be validly substituted pursuant to Section 77 because he remains a candidate until disqualified; but a person whose CoC has been

³⁹ Section 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 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.

⁴⁰ G.R. No. 191938, July 2, 2010, 622 SCRA 744.

⁴¹ *Fermin v. Commission on Elections*, *supra* note 30, at 794.

⁴² *Id.* at 796.

⁴³ *Supra* note 28, at 627.

denied due course or cancelled under Section 78 cannot be substituted because he is not considered a candidate.

To be sure, the cause of Ramon's ineligibility (*i.e.*, the three-term limit) is enforced both by the Constitution and statutory law. Article X, Section 8 of the 1987 Constitution provides:

Section 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.

Section 43 of the *Local Government Code* reiterates the constitutional three-term limit for all elective local officials, to wit:

Section 43. *Term of Office.* – (a) 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. (Emphasis supplied.)

The objective of imposing the three-term limit rule was “to avoid the evil of a single person accumulating excessive power over a particular territorial jurisdiction as a result of a prolonged stay in the same office.” The Court underscored this objective in *Aldovino, Jr. v. Commission on Elections*,⁴⁴ stating:

x x x [T]he framers of the Constitution specifically included an exception to the people's freedom to choose those who will govern them in order to avoid the evil of a single person accumulating excessive power over a particular territorial jurisdiction as a result of a prolonged stay in the same office. To allow petitioner Latasa to vie for the position of city mayor after having served for three consecutive terms as a municipal mayor would obviously defeat the very intent of the framers when they wrote this exception. Should he be allowed another three consecutive terms as mayor of the City of Digos, petitioner would then be possibly

⁴⁴ *Supra* note 8, at 258; citing *Latasa v. Commission on Elections*, G.R. No. 154829, December 10, 2003, 417 SCRA 601.

holding office as chief executive over the same territorial jurisdiction and inhabitants for a total of eighteen *consecutive* years. This is the very scenario sought to be avoided by the Constitution, if not abhorred by it.

To accord with the constitutional and statutory proscriptions, Ramon was absolutely precluded from asserting an eligibility to run as Mayor of Lucena City for the fourth consecutive term. Resultantly, his CoC was invalid and ineffectual *ab initio* for containing the incurable defect consisting in his false declaration of his eligibility to run. The invalidity and inefficacy of his CoC made his situation even worse than that of a nuisance candidate because the nuisance candidate may remain eligible despite cancellation of his CoC or despite the denial of due course to the CoC pursuant to Section 69 of the *Omnibus Election Code*.⁴⁵

Ramon himself specifically admitted his ineligibility when he filed his Manifestation with Motion to Resolve on December 30, 2009 in the COMELEC.⁴⁶ That sufficed to render his CoC invalid, considering that for all intents and purposes the COMELEC's declaration of his disqualification had the effect of announcing that he was no candidate at all.

We stress that a non-candidate like Ramon had no right to pass on to his substitute. As *Miranda v. Abaya* aptly put it:

Even on the most basic and fundamental principles, it is readily understood that the concept of a substitute presupposes the existence of the person to be substituted, for how can a person take the place of somebody who does not exist or who never was. The Court has no other choice but to rule that in all the instances enumerated in Section 77 of the Omnibus Election Code, the existence of a *valid* certificate of candidacy seasonably filed is a requisite *sine qua non*.

⁴⁵ Section 69. *Nuisance candidates*. -- The Commission may *motu proprio* or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if it is shown that said certificate has been filed to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no *bona fide* intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate

⁴⁶ *Rollo* (G.R. No. 196804), pp. 98-101.

All told, a disqualified candidate may only be substituted if he had a *valid* certificate of candidacy in the first place because, if the disqualified candidate did not have a valid and seasonably filed certificate of candidacy, he is and was not a candidate at all. If a person was not a candidate, he cannot be substituted under Section 77 of the Code. Besides, if we were to allow the so-called “substitute” to file a “new” and “original” certificate of candidacy beyond the period for the filing thereof, it would be a crystalline case of unequal protection of the law, an act abhorred by our Constitution.⁴⁷ (Emphasis supplied)

3.

Granting without any qualification of petition in SPA No. 09-029(DC) manifested COMELEC’s intention to declare Ramon disqualified and to cancel his CoC

That the COMELEC made no express finding that Ramon committed any deliberate misrepresentation in his CoC was of little consequence in the determination of whether his CoC should be deemed cancelled or not.

In *Miranda v. Abaya*,⁴⁸ the specific relief that the petition prayed for was that the CoC “be not given due course and/or cancelled.” The COMELEC categorically granted “the petition” and then pronounced — in apparent contradiction — that Joel *Pempe* Miranda was “disqualified.” The Court held that the COMELEC, by granting the petition without any qualification, disqualified Joel *Pempe* Miranda and at the same time cancelled Jose *Pempe* Miranda’s CoC. The Court explained:

The question to settle next is whether or not aside from Joel “Pempe” Miranda being disqualified by the Comelec in its May 5, 1998 resolution, his certificate of candidacy had likewise been denied due course and cancelled.

The Court rules that it was.

Private respondent’s petition in SPA No. 98-019 specifically prayed for the following:

WHEREFORE, it is respectfully prayed that the Certificate of Candidacy filed by respondent for the position of Mayor for the City of Santiago *be not given due course and/or cancelled.*

⁴⁷ *Supra* note 28, at 627.

⁴⁸ *Id.*

Other reliefs just and equitable in the premises are likewise prayed for.

(*Rollo*, p. 31; Emphasis ours.)

In resolving the petition filed by private respondent specifying a very particular relief, the Comelec ruled favorably in the following manner:

WHEREFORE, in view of the foregoing, the Commission (FIRST DIVISION) *GRANTS the Petition*. Respondent JOSE “Pempe” MIRANDA is hereby DISQUALIFIED from running for the position of mayor of Santiago City, Isabela, in the May 11, 1998 national and local elections.

SO ORDERED.

(p.43, *Rollo*; Emphasis ours.)

From a plain reading of the dispositive portion of the Comelec resolution of May 5, 1998 in SPA No. 98-019, it is sufficiently clear that the prayer specifically and particularly sought in the petition was GRANTED, there being no qualification on the matter whatsoever. The disqualification was simply ruled over and above the granting of the specific prayer for denial of due course and cancellation of the certificate of candidacy. x x x.⁴⁹

x x x x

x x x. There is no dispute that the complaint or petition filed by private respondent in SPA No. 98-019 is one to deny due course and to cancel the certificate of candidacy of Jose “Pempe” Miranda (*Rollo*, pp. 26-31). There is likewise no question that the said petition was GRANTED without any qualification whatsoever. It is rather clear, therefore, that whether or not the Comelec granted any further relief in SPA No. 98-019 by disqualifying the candidate, *the fact remains that the said petition was granted and that the certificate of candidacy of Jose “Pempe” Miranda was denied due course and cancelled.* x x x.⁵⁰

The crucial point of *Miranda v. Abaya* was that the COMELEC actually granted the particular relief of cancelling or denying due course to the CoC prayed for in the petition by not subjecting that relief to any qualification.

Miranda v. Abaya applies herein. Although Castillo’s petition in SPA No. 09-029 (DC) specifically sought *both* the disqualification of Ramon *and* the denial of due course to or cancellation of his CoC, the COMELEC categorically stated in the Resolution dated April 19, 2010 that it was

⁴⁹ Id. at 628.

⁵⁰ Id. at 632.

granting the petition. Despite the COMELEC making no finding of material misrepresentation on the part of Ramon, its granting of Castillo's petition without express qualifications manifested that the COMELEC had cancelled Ramon's CoC based on his apparent ineligibility. The Resolution dated April 19, 2010 became final and executory because Castillo did not move for its reconsideration, and because Ramon later withdrew his motion for reconsideration filed in relation to it.

4.

**Elected Vice Mayor must succeed
and assume the position of Mayor
due to a permanent vacancy in the office**

On the issue of who should assume the office of Mayor of Lucena City, Castillo submits that the doctrine on the rejection of the second-placer espoused in *Labo, Jr. v. Commission on Elections*⁵¹ should not apply to him because Ramon's disqualification became final prior to the elections.⁵² Instead, he cites *Cayat v. Commission on Elections*,⁵³ where the Court said:

x x x [I]n *Labo* there was no final judgment of disqualification before the elections. The doctrine on the rejection of the second placer was applied in *Labo* and a host of other cases because the judgment declaring the candidate's disqualification in *Labo* and the other cases had not become final before the elections. To repeat, *Labo* and the other cases applying the doctrine on the rejection of the second placer have one common essential condition — the disqualification of the candidate had not become final before the elections. This essential condition does not exist in the present case.

Thus, in *Labo*, Labo's disqualification became final only on 14 May 1992, three days after the 11 May 1992 elections. On election day itself, Labo was still legally a candidate. In the present case, Cayat was disqualified by final judgment 23 days before the 10 May 2004 elections. On election day, Cayat was no longer legally a candidate for mayor. In short, Cayat's candidacy for Mayor of Buguias, Benguet was legally non-existent in the 10 May 2004 elections.

The law expressly declares that a candidate disqualified by final judgment before an election cannot be voted for, and votes cast for him shall not be counted. This is a mandatory provision of law. Section 6 of Republic Act No. 6646, The Electoral Reforms Law of 1987, states:

⁵¹ G.R. No. 105111 & 105384, July 3, 1992, 211 SCRA 297.

⁵² *Rollo* (G.R. No. 197015), pp. 18-19.

⁵³ G.R. No. 163776, April 24, 2007, 522 SCRA 23.

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. (Emphasis added)

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.⁵⁴

Relying on the pronouncement in *Cayat*, Castillo asserts that he was entitled to assume the position of Mayor of Lucena City for having obtained the highest number of votes among the remaining qualified candidates.

It would seem, then, that the date of the finality of the COMELEC resolution declaring Ramon disqualified is decisive. According to Section 10, Rule 19 of the COMELEC's Resolution No. 8804,⁵⁵ a decision or resolution of a Division becomes final and executory after the lapse of five days following its promulgation unless a motion for reconsideration is seasonably filed. Under Section 8, Rule 20 of Resolution No. 8804, the decision of the COMELEC *En Banc* becomes final and executory five days after its promulgation and receipt of notice by the parties.

⁵⁴ Id. at 44-45.

⁵⁵ *In Re: COMELEC Rules of Procedure on Disputes in an Automated Election System in Connection with the May 10, 2010 Elections* (Promulgated on March 22, 2010).

The COMELEC First Division declared Ramon disqualified through its Resolution dated April 19, 2010, the copy of which Ramon received on the same date.⁵⁶ Ramon filed a motion for reconsideration on April 21, 2010⁵⁷ in accordance with Section 7 of COMELEC Resolution No. 8696,⁵⁸ but withdrew the motion on May 4, 2010,⁵⁹ ostensibly to allow his substitution by Barbara Ruby. On his part, Castillo did not file any motion for reconsideration. Such circumstances indicated that there was no more pending matter that could have effectively suspended the finality of the ruling in due course. Hence, the Resolution dated April 19, 2010 could be said to have attained finality upon the lapse of five days from its promulgation and receipt of it by the parties. This happened probably on April 24, 2010. Despite such finality, the COMELEC *En Banc* continued to act on the withdrawal by Ramon of his motion for reconsideration through the May 5, 2010 Resolution declaring the April 19, 2010 Resolution of the COMELEC First Division final and executory.

Yet, we cannot agree with Castillo's assertion that with Ramon's disqualification becoming final *prior to* the May 10, 2010 elections, the ruling in *Cayat* was applicable in his favor. Barbara Ruby's filing of her CoC in substitution of Ramon significantly differentiated this case from the factual circumstances obtaining in *Cayat*. Rev. Fr. Nardo B. Cayat, the petitioner in *Cayat*, was disqualified on April 17, 2004, and his disqualification became final *before* the May 10, 2004 elections. Considering that no substitution of Cayat was made, Thomas R. Palileng, Sr., his rival, remained the *only* candidate for the mayoralty post in Buguias, Benguet. In contrast, after Barbara Ruby substituted Ramon, the May 10, 2010 elections proceeded with her being regarded by the electorate of Lucena City as a *bona fide* candidate. To the electorate, she became a contender for the same position vied for by Castillo, such that she stood on

⁵⁶ *Rollo* (G.R. No. 196804), p. 106.

⁵⁷ *Id.*

⁵⁸ Section 7. Motion for reconsideration. - A motion to reconsider a Decision, Resolution, Order or Ruling of a Division shall be filed within three (3) days from the promulgation thereof. Such motion, if not pro-forma, suspends the execution for implementation of the Decision, Resolution, Order or Ruling. x x x

⁵⁹ *Rollo* (G.R. No. 196804), pp. 126-129.

the same footing as Castillo. Such standing as a candidate negated Castillo's claim of being the candidate who obtained the highest number of votes, and of being consequently entitled to assume the office of Mayor.

Indeed, Castillo could not assume the office for he was only a second placer. *Labo, Jr.* should be applied. There, the Court emphasized that the candidate obtaining the second highest number of votes for the contested office could not assume the office despite the disqualification of the first placer because the second placer was "not the choice of the sovereign will."⁶⁰ Surely, the Court explained, a minority or defeated candidate could not be deemed elected to the office.⁶¹ There was to be no question that the second placer lost in the election, was repudiated by the electorate, and could not assume the vacated position.⁶² No law imposed upon and compelled the people of Lucena City to accept a loser to be their political leader or their representative.⁶³

The only time that a second placer is allowed to take the place of a disqualified winning candidate is when two requisites concur, namely: (a) the candidate who obtained the highest number of votes is disqualified; and (b) the electorate was fully aware in fact and in law of that candidate's disqualification as to bring such awareness within the realm of notoriety but the electorate still cast the plurality of the votes in favor of the ineligible candidate.⁶⁴ Under this sole exception, the electorate may be said to have waived the validity and efficacy of their votes by notoriously misapplying their franchise or throwing away their votes, in which case the eligible candidate with the second highest number of votes may be deemed elected.⁶⁵ But the exception did not apply in favor of Castillo simply because the second element was absent. The electorate of Lucena City were not the least

⁶⁰ *Supra* note 51, at 309.

⁶¹ *Id.* at 312.

⁶² *Id.* at 309-310; citing *Abella v. Commission on Elections*, 201 SCRA 253.

⁶³ *Gonzalez v. Commission on Elections*, G.R. No. 192856, March 8, 2011, 644 SCRA 761, 802; citing *Miranda v. Abaya*, G.R. No. 136351, July 28, 1999, 311 SCRA 617, 635.

⁶⁴ *Grego v. Commission on Elections*, G.R. No. 125955, June 19, 1997, 274 SCRA 481, 501.

⁶⁵ *Labo, Jr. v. Commission on Elections*, *supra* note 51, at 312.

aware of the fact of Barbara Ruby's ineligibility as the substitute. In fact, the COMELEC *En Banc* issued the Resolution finding her substitution invalid only on May 20, 2011, or a full year *after* the elections.

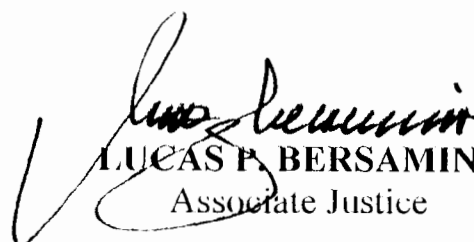
On the other hand, the COMELEC *En Banc* properly disqualified Barbara Ruby from assuming the position of Mayor of Lucena City. To begin with, there was no valid candidate for her to substitute due to Ramon's ineligibility. Also, Ramon did not voluntarily withdraw his CoC before the elections in accordance with Section 73 of the *Omnibus Election Code*. Lastly, she was not an additional candidate for the position of Mayor of Lucena City because her filing of her CoC on May 4, 2010 was beyond the period fixed by law. Indeed, she was not, in law and in fact, a candidate.⁶⁶

A permanent vacancy in the office of Mayor of Lucena City thus resulted, and such vacancy should be filled pursuant to the law on succession defined in Section 44 of the LGC, to wit:⁶⁷

Section 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

WHEREFORE, the Court **DISMISSES** the petitions in these consolidated cases; **AFFIRMS** the Resolution issued on May 20, 2011 by the COMELEC *En Banc*; and **ORDERS** the petitioners to pay the costs of suit.

SO ORDERED.


LUCAS P. BERSAMIN
Associate Justice

⁶⁶ *Gador v. Commission on Elections*, 1-52365, January 22, 1980, 95 SCRA 431.

⁶⁷ Section 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

WE CONCUR:

*I join the dissent
of J. Abad
therein.*

MARIA LOURDES P. A. SERENO
Chief Justice

Antonio Carpio

*I join the dissent
of J. Abad. Ramon Talaga's
COC was voted when J. Abad.*

ANTONIO T. CARPIO
Associate Justice

(Please see Concurring Opinion)
PRESBITERO J. VELASCO, JR.
Associate Justice

*I join the concurring and dissenting
opinion of Justice Mendoza and in the
result of the concurring & dissenting opinions of Justice
Brion.*

Teresito Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

See my Dissenting Opinion
Arturo D. Brion
ARTURO D. BRION
Associate Justice

Diosdado M. Peralta

DIOSDADO M. PERALTA
Associate Justice

*I certify that J. del
Castillo concurred with
the majority opinion of
J. Benavides.*

MARIANO C. DEL CASTILLO
Associate Justice

See my dissenting opinion.

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

See concurring & Dissenting Opinion
Jose Catral Mendoza
JOSE CATRAL MENDOZA
Associate Justice

*I concur with
Justice Benavides insofar
as the conclusion of his decision.*
Bienvenido L. Reyes
BIENVENIDO L. REYES
Associate Justice

*I join the dissent of
J. Mendoza*
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