

EN BANC

G.R. No. 196804 --- MAYOR BARBARA RUBY C. TALAGA, *Petitioner*, *versus* COMMISSION ON ELECTIONS and RODERICK A. ALCALA, *Respondents*.

G.R. No. 197015 --- PHILIP M. CASTILLO, *Petitioner*, *versus* COMMISSION ON ELECTIONS, BARBARA RUBY C. TALAGA and RODERICK A. ALCALA, *Respondents*.

Promulgated:

OCTOBER 09, 2012

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DISSENTING OPINION

ABAD, J.:

I must disagree with the majority opinion penned by Justice Lucas P. Bersamin.

The Facts and the Case

On December 1, 2009 Ramon Talaga and Philip Castillo filed their respective certificates of candidacy (COC) for the position of mayor of Lucena City in the scheduled May 10, 2010 elections.¹ Four days later on December 5, 2009 Castillo filed a petition² before the Commission of Elections (COMELEC) for denial or cancellation of Ramon Talaga's COC, alleging that the latter had already served three consecutive terms as mayor and was, consequently, disqualified to run for another term.³

Ramon countered that the three-term limit rule did not apply to him since the Sandiganbayan preventively suspended him from office during his second and third terms⁴ in connection with Criminal Case 27738. In support of his contention, Ramon cited the COMELEC resolution in *Aldovino v. Asilo*⁵ which held that the terms during which an elected official was preventively suspended should not be counted for purposes of applying the

¹ *Rollo*, G.R. 196804, pp. 218, 220.

² Docketed as SPA 09-029 (DC); *id.* at 88-91.

³ *Id.*

⁴ For the periods of October 13 to November 14, 2005 and September 4 to October 30, 2009; *id.* at 229.

⁵ Issued by the COMELEC's Second Division on November 28, 2007 and affirmed by the COMELEC En Banc on October 7, 2008.

three-term limit rule. Parenthetically, the cited COMELEC resolution was still pending consideration by the Supreme Court in *G.R. 184836*, entitled “*Aldovino, Jr. v. Commission on Elections*.”⁶

Eventually, on December 23, 2009 the Supreme Court reversed and set aside the COMELEC resolution in *Aldovino* that Ramon invoked.⁷ The Court held that preventive suspension does not constitute interruption of a term or loss of office. Such suspension amounts to a mere temporary incapacity of an elected official to perform the service demanded by his office. Thus, preventive suspension is not a valid ground for avoiding the three-term limit rule.

In view of the Supreme Court decision in *Aldovino*, on December 30, 2009 Ramon filed with the COMELEC a manifestation with motion to resolve,⁸ conceding the fact of his disqualification for a fourth term. Acting on his motion, on April 19, 2010 the COMELEC First Division issued a resolution, granting Castillo’s petition and disqualifying Ramon.⁹

Ramon filed a motion for reconsideration of the COMELEC First Division’s April 19, 2010 resolution¹⁰ but, before the COMELEC En Banc could act on his motion, he filed at 9:00 a.m. on May 4, 2010 an *ex parte* manifestation withdrawing the motion.¹¹ At 4:30 p.m. on the same date, Barbara Ruby Talaga (Ruby) filed a COC for mayor of Lucena City in substitution of her husband Ramon. She attached a Certificate of Nomination and Acceptance (CONA) from Lakas-Kampi-CMD, the party that nominated Ramon.¹²

Meanwhile, acting on Ramon’s *ex parte* manifestation, the COMELEC En Banc issued an order on May 5, 2010, declaring the Division’s April 19, 2010 resolution that disqualified him final and executory.¹³ Three days later or on May 8, 2010, the COMELEC Law Department wrote a memorandum to the COMELEC En Banc, recommending that Ruby’s COC be given due course.¹⁴

In the meantime, the automated elections took place two days later on May 10, 2010. Inevitably, although it was Ramon’s name that was on the pre-printed ballot, the votes cast for that name were counted for Ruby, his substitute candidate. She got 44,099 votes as against Castillo’s 39,615 votes.

⁶ December 23, 2009, 609 SCRA 234.

⁷ Id. at 266.

⁸ *Rollo*, G.R. 196804, pp. 98-101.

⁹ Id. at 102-105.

¹⁰ Id. at 106-124.

¹¹ Id. at 126.

¹² Id. at 130-131.

¹³ Id. at 133-134.

¹⁴ Id. at 176-179.

Castillo promptly filed a petition before the City Board of Canvassers (CBOC) asking for the suspension of Ruby's proclamation on the ground that the issue of her substitution of her husband was still pending before the COMELEC.¹⁵ As it happened, acting on the COMELEC Law Department's memorandum, on May 13, 2010 the COMELEC En Banc issued Resolution 8917, giving due course to Ruby's COC and CONA and directing her inclusion in the certified list of candidates. In view of this, the CBOC proclaimed Ruby winner in the mayoralty race.¹⁶

On May 20, 2010 Castillo filed with the COMELEC's Second Division a petition for annulment of Ruby's proclamation in SPC 10-024, alleging that she could not substitute Ramon, whose COC had been cancelled and denied due course. Citing *Miranda v. Abaya*,¹⁷ Castillo pointed out the denial or cancellation of Ramon's COC made it impossible for Ruby to substitute him since, to begin with, he did not have a valid candidacy. And Ruby could not be considered a candidate since the COMELEC approved her substitution three days after the elections. Castillo concluded that the votes for Ramon should be considered stray.¹⁸

In her comment on the petition before the COMELEC,¹⁹ Ruby insisted that she validly substituted her husband since the COMELEC En Banc in fact approved through Resolution 8917 its Law Department's finding that Ramon was disqualified. The En Banc had no occasion to deny due course to or cancel Ramon's COC. Notably, Castillo failed to appeal Resolution 8917. Further, the COMELEC First Division's April 19, 2010 resolution merely declared Ramon disqualified from running for a fourth term. It made no finding that he committed misrepresentation, the ground for denial or cancellation of his COC.

Ruby also insisted that the COMELEC did not have to approve her substitution of Ramon since the law even allowed a substitute to file his COC before the Board of Election Inspectors (BEI) if the cause for substitution occurs immediately prior to election day. Section 12 of Republic Act (R.A.) 9006 is also explicit that, in case of valid substitution, the rule considering votes cast for a substituted candidate as stray votes shall not apply if the substitute candidate has the same family name as the one he replaces. Thus, votes cast for Ramon were properly counted in her favor.

On July 26, 2010 respondent Roderick A. Alcala (Alcala), the elected vice-mayor of Lucena City, sought to intervene in the case. He claimed that, since Ruby's substitution was invalid and Castillo clearly lost the elections, he should assume the post of mayor under the rules of electoral succession.²⁰

¹⁵ Id. at 135-138.

¹⁶ Id. at 142-145.

¹⁷ 370 Phil. 642 (1999).

¹⁸ *Rollo*, G.R. 196804, pp. 185-214.

¹⁹ Id. at 283-298.

²⁰ Id. at 305-318.

In a resolution dated January 11, 2011,²¹ the COMELEC's Second Division dismissed Castillo's petition and Alcala's petition-in-intervention. It held, *first*, that COMELEC En Banc's Resolution 8917, which had become final and executory, already settled the issue of Ruby's substitution; *second*, that the *Miranda v. Abaya*²² ruling did not apply since Castillo's petition cited no material misrepresentation that could be ground for cancellation of Ramon's COC; and, *third*, the Omnibus Election Code does not require the COMELEC to first approve a substitution before it can take effect.

Upon Castillo and Alcala's motion for reconsideration, however, on May 20, 2011 the COMELEC En Banc issued a resolution,²³ reversing the Second Division's ruling. The En Banc held a) that Resolution 8917 could not attain finality since the COMELEC issued it merely as an incident of its ministerial duty to receive COCs of substitute candidates; and b) that COMELEC issued Resolution 8917 without hearing the interested parties on the issue of substitution.

Further, the COMELEC En Banc found that Resolution 8917 was based on the wrong facts. Ruby filed her COC at 4:30 p.m. on May 4, 2010, not on May 5 as the resolution stated. The COMELEC resolved to disqualify Ramon with finality only on May 5. Consequently, Ruby could not have properly substituted Ramon; she simply became an additional candidate who filed her COC out of time. Thus, said the En Banc, Vice-Mayor Alcala should succeed to the position pursuant to Section 44 of the Local Government Code. Chairman Sixto S. Brillantes, Jr. dissented from the majority.

Ruby and Castillo assailed the COMELEC En Banc's resolution *via* these consolidated petitions for *certiorari* and prohibition. On June 21, 2011 the Court issued a *status quo ante* order in G.R. 196804.²⁴

Issues Presented

Was Ramon merely disqualified from running for mayor or was his COC in fact cancelled or denied due course?

Did Ruby validly substitute Ramon as candidate for mayor of Lucena City?

Discussion

There are two remedies available to prevent a candidate from running in an election: a petition for disqualification, and a petition to deny due

²¹ Id. at 361-375.

²² Supra note 17.

²³ *Rollo*, G.R. 196804, pp. 42-52.

²⁴ Id. at 506-507.

course to or cancel a COC. The majority holds that, in resolving the case before it, the COMELEC had in fact denied due course to and cancelled Ramon's COC.

I disagree. Although Castillo denominated his petition as one for cancellation or denial of due course to Ramon's COC and sought the same relief, it did not raise any of the specified grounds for such action under Sections 69 and 78 of the Omnibus Election Code that read:

Sec. 69. *Nuisance candidates.* – The Commission may *motu proprio* or upon 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.

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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 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 69 refers to nuisance candidates. Section 78, on the other hand, treats of material misrepresentation in the COC. Castillo's petition made no claim that Ramon was a nuisance candidate or that he made some material misrepresentation in his COC. All that the petition raised against Ramon's candidacy is the fact that he had already served three consecutive terms as mayor.

Castillo of course points out that by filing a COC for mayor after he had already served three consecutive terms, Ramon actually misrepresented the fact of his eligibility for that office, knowing that it was not the case. But this argument is unavailing because at the time Ramon filed his COC the COMELEC's official stand, supported by this Court's decision in *Borja, Jr. v. Commission on Elections*,²⁵ was that the terms during which an elected official was preventively suspended should not be counted for purposes of applying the three-term limit. It was only on December 23, 2009, nearly a month after Ramon filed his COC, that the Supreme Court reversed in *Aldovino, Jr. v. Commission on Elections* the election body's official stand.

²⁵ 356 Phil. 467 (1998).

Thus, it cannot be said that Ramon knowingly misrepresented his eligibility when he filed his COC.

While Castillo denominated his petition as one to deny due course to or cancel Ramon's COC, and prayed for such remedies, the basic rule is that the nature of an action is governed by the allegations in the petition, not by its caption or prayer. We cannot rely simply on the fact that the COMELEC resolution granted the petition without making any qualifications. A closer reading of the resolution will show that Ramon was merely being disqualified for having served three consecutive terms. It made no mention of Ramon's COC as having been cancelled or denied due course, and indeed gave no grounds which would justify such a result. The ponencia cites *Miranda v. Abaya*²⁶ to justify its stand, but fails to note that in *Miranda* the Court found that there was blatant misrepresentation, which is in clear contrast to this case.

On the issue of substitution, the law specifically provides that a candidate who has been disqualified for any cause may be substituted by another. Section 77 of the Omnibus Election Code (Batas Pambansa 881) states:

Sec. 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**. x x x (Emphasis supplied)

Castillo cites *Miranda v. Abaya*²⁷ as justification for rejecting the substitution of Ramon by Ruby. But the substitution that the Court did not allow in *Miranda* is the substitution of a candidate whose COC has been ordered cancelled on the grounds enumerated in Sections 69 and 78 of the Omnibus Election Code. The reasoning is that it is not possible to substitute such a person since he cannot be considered a candidate at all. Substitution presupposes the existence of a candidate to be substituted.

Miranda recognized that it is possible for a disqualified candidate to have a valid COC since the grounds for disqualification are distinct from the grounds for canceling or denying due course to a COC under Sections 69 and 78 of the Omnibus Election Code. Thus, it does not follow that a disqualified candidate necessarily filed an invalid COC. A disqualified candidate whose COC was neither canceled nor denied due course may be substituted under the proper circumstances provided by law.

Going to another point, it will be recalled that the COMELEC First Division disqualified Ramon from running for mayor on April 19, 2010

²⁶ Supra note 17.

²⁷ Id.

upon Castillo's petition. Ramon filed a motion for reconsideration which went up to the COMELEC En Banc but at 9:00 a.m. on May 4, 2010 he filed an *ex parte* manifestation withdrawing his motion for reconsideration. In the afternoon of the same day, Ruby filed her COC, admittedly before the COMELEC En Banc could act on Ramon's withdrawal of his motion for reconsideration. Only on the following day, May 5, did the COMELEC En Banc acknowledge the withdrawal and considered the First Division's April 19, 2010 resolution final and executory.²⁸

The Office of the Solicitor General (OSG) joined Alcala and Castillo in claiming that Ruby did not validly substitute Ramon because at the time that she filed her COC, the COMELEC had not yet disqualified Ramon by final judgment as required by Section 77 of the Omnibus Election Code.

But Ramon's withdrawal of his motion for reconsideration in the morning of May 4, 2010 rendered the COMELEC First Division's April 19, 2010 resolution final and executory, even without the En Banc's formal action. The Court held in *Rodriguez, Jr. v. Aguilar, Sr.*²⁹ that a motion for reconsideration, once withdrawn, has the effect of canceling such motion as if it were never filed. The consequence of this is that the decision subject of the withdrawn motion for reconsideration *ipso facto* lapses into finality upon the expiration of period for appeal. Thus, in accordance with COMELEC Rules, the April 19, 2010 resolution became final and executory five days from its promulgation or on April 24, 2010.³⁰

The May 5, 2010 COMELEC En Banc resolution merely confirmed the final and executory nature of the First Division's April 19, 2010 resolution. As correctly observed by Chairman Brillantes in his dissent, the withdrawal's effectivity cannot be made to depend on COMELEC approval because, if such were the case, substitution of candidates may be frustrated by either the commission's delay or inaction.

Castillo claims that, for the substitution of a candidate to be effective, the COMELEC must approve the same on or before election day.³¹ Here, the COMELEC En Banc issued Resolution 8917 which approved Ruby's COC on May 13, 2010 or three days after the elections.

But no law makes the effectivity of a substitution hinge on prior COMELEC approval. Indeed, it would be illogical to require such prior approval since the law allows a substitute candidate to file his COC even up to mid-day of election day with any board of election inspectors in the political subdivision where he is a candidate. Surely, this rules out the possibility of securing prior COMELEC approval of the substitution.

²⁸ *Rollo*, G.R. 196804, pp. 490-491, 527-529.

²⁹ 505 Phil. 468 (2005).

³⁰ Part IV, Rule 18, Section 13(b) in relation to Part V, B, Rule 25 of the 1993 COMELEC Rules of Procedure.

³¹ *Rollo*, G.R. 197015, pp. 35-36.


COMELEC Resolution 8917, which gave due course to Ruby's COC and directed her inclusion in the certified list of candidates, amounted to a mere formality since the substitution took effect when she filed her COC and the required CONA.

Finally, I would like to voice my concern regarding Justice Arturo D. Brion's view on the applicability of the three-term limit rule as a ground for disqualification. In his separate opinion, Justice Brion opines that a candidate who has already served three consecutive terms can only be disqualified after he has been proclaimed as the winner for a fourth term. His theory is that the Constitution merely prohibits an official from serving more than three consecutive terms; it does not prohibit him from running for a fourth term.

Such an interpretation, however, would cause confusion in the polls and make a mockery of the election process. It robs qualified candidates of the opportunity of being elected in a fair contest among qualified candidates. The candidacy of one who has already served three consecutive terms is worse than that of a nuisance candidate. Election laws should be interpreted in such a way as to best determine the will of the electorate, not to defeat it. The Supreme Court has on occasion upheld the disqualification of candidates who have already served three consecutive terms from running for another. Indeed in *Aldovino*, penned by no other than Justice Brion himself, the dispositive portion read: "The private respondent Wilfredo F. Asilo is declared **DISQUALIFIED to run**, and perforce to serve, as Councilor of Lucena City for a prohibited fourth term."³² (Emphasis supplied)

Thus, while Justice Brion likewise concludes that the action before the COMELEC was a petition for disqualification and not for the denial or cancelation of his COC, I cannot entirely agree with his reasoning.

WHEREFORE, I vote to GRANT the petition of Barbara Ruby Talaga in G.R. 196804, and DISMISS the petition of Philip M. Castillo in G.R. 197015 for lack of merit.


ROBERTO A. ABAD
Associate Justice

³² Supra note 6, at 266-267.