G.R. No. 196804 – MAYOR BARBARA RUBY C. TALAGA v. COMMISSION ON ELECTIONS and RODERICK A. ALCALA.

G.R. No. 197015 – PHILIP M. CASTILLO v. COMMISSION ON ELECTIONS, MAYOR BARBARA RUBY TALAGA and RODERICK A. ALCALA.

Promulgated: OCTOBER 09, 2012

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CONCURRING AND DISSENTING OPINION

MENDOZA, J.:

The subject consolidated petitions for *certiorari* seek to annul and set aside the *En Banc* Resolution of the Commission on Elections *(Comelec)* in SPC No. 10-024, dated May 20, 2011, which, among others, ordered the respondent Vice-Mayor to succeed as Mayor of Lucena City, pursuant to Section 44 of the Local Government Code.

From the records, it appears that:

1] On **December 1, 2009**, Ramon Y. Talaga *(Ramon)* and Philip M. Castillo *(Castillo)* filed their respective Certificates of Candidacy *(CoC)* before the Commission on Elections *(Comelec)*.

2] On **December 5, 2009**, Castillo filed the initiatory pleading, a petition, docketed as SPA No. 09-029 (DC) and entitled, ***"In the Matter of the Petition To Deny Due Course or to 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,"*** praying as follows:

> 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." [Emphasis supplied]

3] On **December 30, 2009**, Ramon filed a *Manifestation with Motion to Resolve SPA No. 09-029 (DC)* wherein he insisted that there was no misrepresentation on his part constituting a ground for a denial of due course to his CoC or cancellation thereof, but in view of the ruling in *Aldovino,*[1] he acknowledged that he was indeed **not eligible** and **disqualified** to run as Mayor of Lucena City, praying that

> WHEREFORE, it is most respectfully prayed that the instant petition be SUBMITTED for decision and that **he be declared as DISQUALIFIED** to run for the position of Mayor of Lucena City in view of the new ruling laid down by the Supreme Court. [Emphasis supplied]

4] On **April 19, 2010**, the Comelec First Division promulgated its resolution disqualifying Ramon from running as Mayor of Lucena City in the May 10, 2010 local elections, the dispositive portion of which reads:

> WHEREFORE, premises considered, the instant **Petition** is hereby **GRANTED.** Accordingly, **Ramon S. Talaga, Jr. is hereby DISQUALIFIED** to run for Mayor of Lucena City for the 10 May 2010 National and Local Elections. [Emphases supplied]

5] On **April 21, 2010**, Ramon filed a *Verified Motion for Reconsideration* in SPA No. 09-029.

6] On **May 4, 2010**, at **9:00 o'clock** in the morning, Ramon filed an *Ex Parte Manifestation of Withdrawal of the Pending Motion for Reconsideration.*

7] On the same day, **May 4, 2010**, at 4**:30 o'clock** in the afternoon, the wife of Ramon, Barbara Ruby C. Talaga *(Barbara Ruby)*, filed a Certificate of Candidacy for Mayor of Lucena City, attaching thereto the Certificate of Nomination and Acceptance (CONA) issued by the Lakas-Kampi-CMD, the party that had nominated Ramon.

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[1] *Aldovino , Jr. v. Commission on Elections*, G.R. No. 184836, December 23, 2009, 609 SCRA 235, where it was ruled that preventive suspension, being a mere temporary incapacity, was not a valid ground for avoiding the three-term limit rule.

8] On **May 5, 2010**, the Comelec En Banc, in SPC No. 10-024, issued an Order declaring the April 19, 2010 Resolution disqualifying Ramon as having become final and executory, the decretal portion of which reads:

> ... the Commission hereby orders as follows:
>
> 1] To NOTE the instant Manifestation; and
>
> 2] To consider the April 19, 2010 Resolution of the Commission First Division final and executory.
>
> SO ORDERED.

9] On **May 10, 2010**, the National and Local Elections were successfully conducted. 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.

10] On **May 11, 2010**, Castillo filed before the Board of Canvassers of Lucena City a *Petition to Suspend Proclamation* praying for the suspension of the proclamation of Ramon or Barbara Ruby as the winning candidate.

11] On **May 12, 2010**, at around 5:17 o'clock in the afternoon, per City/Municipal Certificate of Canvass, Barbara Ruby was credited with 44,099 votes while Castillo garnered 39,615 votes.

12] On **May 13, 2010**, the Comelec, in Resolution No. 8917, gave due course to the CoC of Barbara Ruby as substitute candidate.

13] On the same day, **May 13, 2010**, the Board of Canvassers of Lucena City did not act on Castillo's Petition to Suspend Proclamation and proclaimed Barbara Ruby as the winning candidate and elected Mayor of Lucena City.

14] Aggrieved, on May 20, 2010, Castillo filed his *Petition (For Annulment of Proclamation of Barbara Ruby C. Talaga as the Winning Candidate for Mayor of Lucena City, Quezon)* with the Comelec, which was docketed as SPC No. 10-024, arguing 1] that Barbara Ruby could not substitute Ramon because his CoC had been cancelled and denied due course; and 2] that 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.

15] On June 18, 2010, Barbara Ruby filed her *Comment on the Petition for Annulment of Proclamation* contending that the substitution was valid on the ground that the Comelec En Banc did not deny due course to or cancel Ramon's CoC, despite a declaration of disqualification as there was no finding of misrepresentation.

16] On **July 26, 2010,** Roderick Alcala *(Alcala),* the elected Vice Mayor of Lucena City filed a *Motion for Leave to Admit Attached Petition in Intervention* and a *Petition in Intervention*, asserting that he should assume the position of Mayor because Barbara Ruby's substitution was invalid and Castillo lost in the elections.

17] On **January 11, 2011**, the Comelec Second Division dismissed the petition of Castillo and the motion to intervene of Alcala. It reasoned out, among others, that Resolution No. 8917 (allowing the substitution) became final and executory when Castillo failed to act after receiving a copy thereof.

18] Not in conformity, both Castillo and Alcala filed their respective motions for reconsideration of the January 11, 2011 Resolution of the Comelec Second Division for being contrary to law and jurisprudence.

Castillo argued 1] that the determination of the candidacy of a person could not be made after the elections and then given retroactive effect; and 2] that the CoC of Ramon was in reality cancelled and denied due course which consequently barred him from being substituted as a candidate. Accordingly, he prayed that the votes cast in favor of both Ramon and Barbara Ruby be considered stray and that he be proclaimed winner, being the qualified candidate with the highest number of votes.

Alcala, in advocacy of his position, argued that 1] Resolution 8917 was based on erroneous set of facts; and 2] there was no valid reason for the substitution as there was no withdrawal, disqualification or death of another candidate.

Barbara Ruby, in her defense, countered that the ruling of the Comelec Second Division was in accord with law and jurisprudence and that doubts as to the validity of the

substitution should be resolved in her favor as she received the mandate of the people of Lucena City.

19] On **May 20, 2011,** acting on the motions for reconsideration, the **Comelec En Banc** *reversed* the January 11, 2011 Resolution of the Comelec Second Division reasoning out that 1] Resolution 8917 was issued without any adversarial proceedings as the interested parties were not given the opportunity to be heard; 2] Resolution 8917 was based on erroneous set of facts because Barbara Ruby filed her Certificate of Candidacy on **May 4, 2010** at 4:30 o'clock in the afternoon, before the Comelec acted on Ramon's withdrawal of his motion for reconsideration on **May 5, 2010,** and so premature; and 3] Barbara Ruby's Certificate of Candidacy was filed out of time because she was just another candidate, not a substitute.

It also ruled that Barbara Ruby being disqualified, the law on succession under Section 44 of the Local Government Code should apply.

Accordingly, the Comelec En Banc decreed:

> 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 Alcala;
> 3. ANNULLING 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 Panglungsod 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.

Hence, these consolidated petitions of Castillo and Barbara Ruby.

In their respective petitions, both Barbara Ruby and Castillo pray, among others, that she or he be declared as the winning candidate in the May 10, 2010 mayoralty election in Lucena City.

II – *Nature of Petition under Section 78*

As the records indicate, the controversy stemmed from the initiatory pleading filed by Castillo in SPA No. 09-029 (DC) entitled, ***"In the Matter of the Petition To Deny Due Course or to 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,"*** a petition filed under **Section 78** of the the Omnibus Election Code (Batas Pambansa Blg. 881) which reads:

> **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.

A certificate of candidacy is a formal requirement for eligibility to public office.[2] **Section 73** of the Omnibus Election Code provides that no person shall be eligible for any elective public office unless he files a sworn certificate of candicacy within the period fixed therein. **Section 74** thereof

[2] *Bellosillo, Marquez and Mapili,* Effective Litigation & Adjudication of Election Contests, 2012 Ed., p. 47.

provides that the CoC of the person filing it shall state, among others, that he is eligible for the office he seeks to run, and that the facts stated therein are true to the best of his knowledge. In the case of *Sinaca v. Mula*,[3] the Court had an occasion to elaborate on the nature of a CoC in this wise:

> A certificate of candidacy is 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.

Thus, when Ramon filed his CoC before the COMELEC, he pronounced before the electorate his intention to run for the mayoralty post and declared that he was "eligible" for the said office.

A petition filed under Section 78 of the Omnibus Election Code is one of two remedies by which the candidacy of a person can be questioned. The other is a petition under Section 68.[4] In *Mitra v. Comelec*,[5] the nature of a petition under Section 78 was further explained as follows:

> **Section 74**, in relation to **Section 78,** of the Omnibus Election Code (OEC) governs the cancellation of, and grant or denial of due course to, COCs. The combined application of these sections requires that the candidate's stated facts in the COC be true, under pain of the COC's denial or cancellation if any false representation of a material fact is made. To quote these provisions:
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> > 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

[3] G.R. No. 135691, September 27, 1999, 315 SCRA 266, 276.
[4] *Gonzales v. Comelec*, G.R. No. 192856, March 8, 2011, 644 SCRA 761.
[5] G.R. No. 191938, July 2, 2010, 622 SCRA 744.

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

The false representation that these provisions mention must necessarily pertain to a material fact. The critical material facts are those that refer to a candidate's qualifications for elective office, such as his or her citizenship and residence. The candidate's status as a registered voter in the political unit where he or she is a candidate similarly falls under this classification as it is a requirement that, by law (the Local Government Code), must be reflected in the COC. The reason for this is obvious: the candidate, if he or she wins, will work for and represent the political unit where he or she ran as a candidate.

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.** [Emphases supplied]

A- ***A Petition to Deny Due Course or to Cancel a CoC under Section 78 is different from a Disqualification Case and a Quo Warranto Case***

In *Fermin v. Comelec*,[6] it was stressed that "a 'Section 78' petition ought not to be interchanged or confused with a 'Section 68' petition. *They are different remedies, based on different grounds, and resulting in different eventualities."* In the said case, it was written:

> To emphasize, a petition for disqualification, on the one hand, can be premised on Section 12 or 68 of the OEC, or Section 40 of the LGC. On the other hand, a petition to deny due course to or cancel a CoC can only be grounded on a statement of a material representation in the said certificate that is false. The petitions also **have different effects. While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all.**

In *Fermin*, a petition to deny due course or to cancel a certificate of candidacy was also distinguished from a petition for quo warranto as follows:

> 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 wining candidate. [Emphases in the original]

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

Also as can be gleaned from the foregoing, it was clearly stressed in *Fermin* that 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 was false.

When it was stated in *Fermin* that the false material representation "may relate to the qualifications required of the public office he/she is running for," it simply meant that it could cover one's qualifications. It was not, however, restricted to qualifications only. When word "may" was used, it meant that it could relate to, or cover, any other material misrepresentation as to eligibility. Certainly, when one speaks of eligibility, it is understood that a candidate must have all the constitutional and statutory qualifications[7] and none of the disqualifications.[8] "*Eligible x x relates to the capacity of holding as well as that of being elected to an office.*"[9] "*Ineligibility*" has been defined as a "*disqualification or legal incapacity to be elected to an office* or appointed to a particular position."[10]

B - A person whose certificate is cancelled or denied due course under Section 78 cannot be treated as a candidate at all

A cancelled certificate of candidacy cannot give rise to a valid candidacy, and much less to valid votes.[11] Much in the same manner as a person who filed no certificate of candidacy at all and a person who filed it out of time, a person whose certificate of candidacy is cancelled or denied due course is no candidate at all.[12] The Court has been consistent on this. In *Fermin*, in comparing a petition under Section 78 with a petition under Section 68, it was written: "While a person who is disqualified under Section

[7] Section 39 and 6 of Article VI and Sections 2 and 3 of Article VII of the 1987 Constitution and Section 39 of the LGC.
[8] Sections 12 and 68 of the OEC and Section 40 of the LGC.
[9] Bouvier's Law Dictionary, Vol. I, Eighth ed., p. 1002.
[10] Black's Law Dictionary, Fifth ed., p. 698; and Bouvier's Law Dictionary, Vol. I, Eighth ed., p. 1552.
[11] *Bautista v. Comelec*, G.R. No. 133840, November 13, 1998, 298 SCRA 480.
[12] *Miranda v. Abaya*, 370 Phil. 642 (1999). See also *Gador v. Comelec*, 184 Phil 395 (1980).

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." Thus, whether or not his CoC was cancelled before or after the election is immaterial, his votes would still be considered stray as his certificate was void from the beginning.

C - *A candidate disqualified by final judgment before an election cannot be voted for, and votes cast for him shall not be counted.*

Granting arguendo that the petition is considered as one for disqualification, still, he cannot be voted for and the votes for him cannot be counted if he was disqualified by final judgment before an election. In Section 6 of R.A No. 6646 or The Electoral Reforms Law of 1987, it is clearly provided that a candidate **disqualified by final judgment before** an election cannot be voted for, and votes cast for him shall **not be counted**. This provision of law was applied in the case of *Cayat v. Comelec*,[13] where it was written:

> 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:
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> > 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.
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> 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

[13] G.R. No. 163776, April 24, 2007, 522 SCRA 23.

> 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.
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> 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.

D - *A candidate whose CoC has been cancelled or denied due course cannot be substituted.*

Section 77[14] of the Omnibus Election Code enumerates the instances wherein substitution may be allowed: They are death, disqualification and withdrawal of another. **A candidate whose CoC has been cancelled or denied due course cannot be substituted**. This was the clear ruling in *Miranda v. Abaya*,[15] where it was written:

> It is at once evident that the importance of a valid certificate of candidacy rests at the very core of the electoral process. It cannot be taken lightly, lest there be anarchy and chaos. Verily, this explains why the law provides for grounds for the **cancellation and denial of due course to certificates of candidacy.**
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> After having considered the importance of a certificate of candidacy, it can be readily understood why in *Bautista* we ruled that a person with a cancelled certificate is no candidate at all. Applying this principle to the case at bar and considering that **Section 77 of the Code is clear and unequivocal that only an official candidate of a registered or accredited party may be substituted, there demonstrably cannot be any possible substitution of a person whose certificate of candidacy has been cancelled and denied due course.** [Emphases supplied]

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[14] **Section 77.** *Candidates in case of death, disqualification or withdrawal of another*. - 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 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.

[15] 370 Phil. 642 (1999).

III – *An assiduous assessment of the factual situation leads to the conclusion that Petitioner Castillo should have been proclaimed mayor-elect of Lucena City*

I **concur** with the majority that Ramon, having served as mayor of Lucena City for ***three consecutive terms,*** was ***ineligible*** to run again for the same position in the May 10, 2012 election as his candidacy was proscribed by no less than the Constitution. Section 8, Article X 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.

In line therewith, Section 43 of the Local Government Code provides:

> Sec. 43. Term of Office.
>
> x x x.
>
> (b) No local elective official shall serve for more than **three 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.

In *Lonzanida v. Commission on Elections*,[16] the Court held that the two conditions for the application of the disqualification must concur: 1) that the official concerned has been elected for three consecutive terms in the same local government post; and 2) that he has fully served three consecutive terms. In *Aldovino v. Comelec*,[17] the Court stressed that "preventive suspension, by its nature, does not involve an effective

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[16] 370 Phil. 625 (1999).
[17] G.R. No. 184836, December 23, 2009, 609 SCRA 234.

interruption of a term and should therefore not be a reason to avoid the three-term limitation."

Contending that Ramon was ineligible and must be disqualified to run again as Mayor, Castillo filed before the Comelec a petition entitled, "*In the Matter of the Petition To Deny Due Course or to 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,"* praying "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."

Evidently, the petition filed was pursuant to Section 78 of the Omnibus Election Code. On December 30, 2009, Ramon filed a Manifestation with Motion to Resolve SPA No. 09-029 (DC) wherein he acknowledged that he was indeed *not eligible* and *disqualified* to run as Mayor of Lucena City. On April 19, 2010, the Comelec First Division promulgated its Resolution "**granting the petition of Castillo** and **disqualifying Ramon** to run for Mayor of Lucena City for the May 10, 2010 National and Local Elections."

Specious, if not ludicrous, is the argument that there was nothing in the resolution from which it can be deduced that the Comelec First Division cancelled, or denied due course to, Ramon's CoC. Such argument strains or tasks one's credulity too much. Common sense dictates that when the Comelec First Division granted the petition of Castillo, it, in effect, **granted his prayer** which reads:

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

Needless to state, the Comelec considered Ramon as having made *material misrepresentation* as he was manifestly **not eligible**, having served as mayor of Lucena City for three consecutive terms. It could not have been otherwise. A candidate who states in his CoC that he is "eligible," despite having served the constitutional limit of three consecutive terms, is clearly committing a *material misrepresentation*, warranting not only a cancellation of his CoC but also a proscription against substitution.

As held in *Bautista,*[18] *Miranda,*[19] *Gador,*[20] *and Fermin,*[21] a person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all and his votes will be considered as <u>stray</u> as his certificate was void from the beginning. Also in *Cayat,*[22] assuming that this is a disqualification case, the rule is that a candidate disqualified by final judgment before an election cannot be voted for, and votes cast for him shall <u>not be counted</u>.

Accordingly, when his CoC was denied due course or cancelled, Ramon was never considered a candidate at all from the beginning.

Indeed, on April 21, 2010, Ramon filed a *Verified Motion for Reconsideration*, but on May 4, 2010, at 9:00 o'clock in the morning, he filed an *Ex Parte Manifestation of Withdrawal of the Pending Motion for Reconsideration*. His motion, in effect, rendered the April 19, 2010

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[18] Supra note 11.
[19] Supra note 12.
[20] Supra note 12.
[21] Supra note 6.
[22] G.R. No. 163776, April 24 2007, 522 SCRA 23.

Resolution of the Comelec First Division as **final and executory** pursuant to Section 13, Rule 18 of the 1993 COMELEC Rules of Procedure, which reads:

> Sec. 13. Finality of Decisions or Resolutions. - (a) In ordinary actions, special proceedings, provisional remedies and special reliefs; a decision or resolution of the Commission en banc shall become final and executory after thirty (30) days from its promulgation.
>
> (b) In Special Actions and Special Cases, a decision or resolution of the Commission en banc shall become final and executory after five (5) days from its promulgation unless restrained by the Supreme Court.
>
> (c) Unless a motion for reconsideration is seasonably filed, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days in Special actions and Special cases and after fifteen (15) days in all other actions or proceedings, following its promulgation.

The reason is that a motion for reconsideration once withdrawn has the effect of cancelling such motion as if it was never filed. In *Rodriguez v. Aguilar,*[23] it was written:

> Upon the withdrawal by respondent of his Motion for Reconsideration, it was as if no motion had been filed. Hence, the **Order of the trial court under question became final and executory 15 days from notice by the party concerned.**
>
> In the same manner that the withdrawal of an appeal has the effect of rendering the appealed decision final and executory, the withdrawal of the Motion for Reconsideration in the present case had the effect of rendering the dismissal Order final and executory. By then, there was no more complaint that could be amended, even for the first time as a matter of right.

Although the April 19, 2010 Resolution became final and executory on April 24, 2010, it has no effect on Ramon's candidacy or his purported substitute because his certificate was void from the beginning. The date of the finality of the denial of due course or cancellation of a CoC has no

[23] G.R. No. 159482, 505 Phil. 468 (2005).

controlling significance because, as consistently ruled in *Bautista,*[24] *Miranda,*[25] *Gador,*[26] *and Fermin,*[27] "**the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all."**

No substitution in case of cancellation or denial of due course of a CoC

As Ramon was never a candidate at all, his *substitution by Barbara Ruby was legally ineffectual.* This was the clear ruling in the case of *Miranda v. Abaya*,[28] where it was ruled that "considering that Section 77 of the Code is clear and unequivocal that only an official candidate of a registered or accredited party may be substituted, ***there demonstrably cannot be any possible substitution of a person whose certificate of candidacy has been cancelled and denied due course***."

There being no valid substitution, the candidate with the highest number of votes should be proclaimed as the duly elected mayor

As there was no valid substitution, Castillo, the candidate with the highest number of votes is entitled to be, and should have been, proclaimed as the duly elected mayor. The reason is that he is the **winner**, not the loser. He was the one who garnered the highest number of votes among the recognized legal candidates who had valid CoCs. Castillo was **not the second placer.** He was the **first placer.**

[24] Supra note 11.
[25] Supra note 12.
[26] Supra note 12.
[27] Supra note 6.
[28] Supra note 9.

On this score, I have to digress from the line of reasoning of the majority and register my **dissent.**

The ruling in *Cayat* is applicable because, although the petition therein was for disqualification, the CoC of Cayat was cancelled. At any rate, even granting that it is not exactly at all fours, the undisputed fact is that Castillo's petition is one under Section 78. That being the case, the applicable rule is that enunciated in in *Bautista,*[29] *Miranda,*[30] *Gador,*[31] *and Fermin*[32] - "**the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all."** The votes cast for him and those for his purported substitute could only be considered as stray and could not be counted.

The Second Placer Doctrine

The second placer doctrine applies only in case of a <u>vacancy</u> caused by a disqualification under Section 12 and Section 68 of the OEC and Section 40 of the LGC or quo warranto petition under Section 253. When a winning candidate is **disqualified** under Section 12 and Section 68 of the OEC and Section 40 of the LGC or **unseated** under Section 253, a **vacancy is created** and **succession** under Section 44 of the the Local Government Code[33] becomes operable. Section 44 provides:

CHAPTER II
Vacancies and Succession

> **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. If a permanent vacancy occurs in the offices of the governor, vice-governor, mayor, or vice-mayor, the highest ranking sanggunian member or, in case of his permanent inability,

[29] Supra note 11.
[30] Supra note 12.
[31] Supra note 12.
[32] Supra note 6.
[33] Republic Act No. 7160; An Act Providing for a Local Government Code of 1991.

> the second highest ranking sanggunian member, shall become the governor, vice-governor, mayor or vice-mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein.
>
> (b) If a permanent vacancy occurs in the office of the punong barangay, the highest ranking sanggunian barangay member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the punong barangay.
>
> (c) A tie between or among the highest ranking sanggunian members shall be resolved by the drawing of lots.
>
> (d) The successors as defined herein shall serve only the unexpired terms of their predecessors.
>
> For purposes of this Chapter, a **permanent vacancy arises** when an elective local official fills a higher vacant office, refuses to assume office, **fails to qualify,** dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.
>
> For purposes of succession as provided in the Chapter, ranking in the sanggunian shall be determined on the basis of the proportion of votes obtained by each winning candidate to the total number of registered voters in each district in the immediately preceding local election.

As stated therein, one of the causes for a vacancy is when a winning candidate fails to qualify or is disqualified. The vacancy is created when a first placer is disqualified *after* the elections. This is very clear because *before* an election, there is no first placer to speak of.

As the CoC of Ramon was cancelled, he was not a candidate at all. As he was not a candidate, he could not be considered a first placer. The first placer was the bona fide candidate who garnered the highest number of votes among the legally recognized candidates – Castillo.

As Ramon was not a candidate, his purported substitute, Barbara Ruby, was not a bona fide candidate. There is, therefore, **no vacancy**, the only situation which could start the ball rolling for the operation of the rule of succession under Rule 44 of the Local Government Code.

Granting arguendo that Castillo was the second placer, the doctrine would still not apply

Granting arguendo that Castillo was a second placer, the rejection of the second placer doctrine, first enunciated in *Labo v. Comelec*,[34] would still not apply in this situation. In *Labo* and similarly situated cases, it was ruled that "the subsequent disqualification of a candidate who obtained the highest number of votes does not entitle the candidate who garnered the second highest number of votes to be declared the winner." The *Labo* ruling, however, is not applicable in the situation at bench for two reasons: ***First,*** Ramon was not a candidate as he was disqualified by final judgment before the elections; and ***Second,*** the situation at bench constitutes a clear exception to the rule as stated in *Labo v. Comelec,*[35] *Cayat v. Comelec*[36] and *Grego v. Comelec*.[37]

On the first ground, in *Cayat*, it was ruled that *Labo* is applicable only when there is "no final judgment of disqualification before the elections." Specifically, *Cayat* reads:

> Labo, Jr. v. COMELEC, which enunciates the doctrine on the rejection of the second placer, **does not apply to the present case because <u>in Labo there was no final judgment of disqualification before the elections.</u>** 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. [Emphases supplied]

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[34] 257 Phil. 1 (1989).
[35] Id.
[36] G.R. No. 163776, April 24, 2007, 522 SCRA 23.
[37] G.R. No. 125955, June 19, 1997, 274 SCRA 481, 501.

In this case, the cancellation of Ramon's CoC because of his disqualification became final before the May 10, 2010 National and Local Elections.

The only other instance that a second placer is allowed to be proclaimed instead of the first placer is when the exception laid down in *Labo v. Comelec, Cayat v. Comelec* and *Grego v. Comelec* is applicable. In *Grego*, it was held that "the exception is predicated on the concurrence of two assumptions, namely: (1) the one who obtained the highest number of votes is disqualified; and (2) the electorate is fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety but would nonetheless cast their votes in favor of the ineligible candidate."

In this case, the two assumptions have been satisfied: 1] the cancellation of Ramon's CoC became final before the May 10, 2010 National and Local Elections and 2] the electorate was conscious of the circumstances surrounding Ramon's candidacy and subsequent disqualification. The fact that Ramon was a renowned political figure in Lucena City, owing to his three (3) consecutive terms as mayor therein, cannot be denied. Verily, the people of Lucena City were fully aware of the circumstances of his candidacy, but still voted for Ramon despite his notorious ineligibility for the post.

The gratuitous presumption that the votes for Ramon were cast in the sincere belief that he was a qualified candidate is negated by the electorate's awareness that Ramon had long-served as mayor of the city for almost a decade. This cannot be classified as an innocuous mistake because the proscription was prescribed by the Constitution itself. Indeed, voting for a

person widely known as having reached the maximum term of office set by law was a risk which the people complacently took. Unfortunately, they misapplied their franchise and squandered their votes when they supported the purported substitute, Barbara Ruby. Thus, the said votes could only be treated as stray, void, or meaningless.

In view of all the foregoing, I vote that the petition of Barbara Ruby be **DENIED** and the petition of Castillo be **GRANTED**.

JOSE CATRAL MENDOZA
Associate Justice