

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, MAYOR BARBARA RUBY
C. TALAGA and RODERICK A. ALCALA, *respondents*.**

Promulgated:

OCTOBER 09, 2012

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SEPARATE OPINION

REYES, J.:

I concur with the *ponencia's* conclusion that Section 44 of the Local Government Code (LGC) should be applied in filling the permanent vacancy created in the office of the mayor. However, I hold a different view on the nature of the petition filed to challenge the candidacy of Ramon Talaga (Ramon).

**The petition filed against Ramon is
one for disqualification and not for
cancellation of certificate of
candidacy (COC).**

It is well to remember that Philip Castillo (Castillo) challenged Ramon's candidacy by filing a petition which seeks to deny due course or cancel the COC of the latter on the ground that he had already served three (3) consecutive terms as City Mayor of Lucena. I am of the view that the petition must be treated as one for disqualification since the ground used to

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support the same, *i.e.* the violation of the three-term limit, is a disqualifying circumstance which prevents a candidate from pursuing his candidacy.

Indeed, the violation of the three-term limit is not specifically enumerated as one of the grounds for the disqualification of a candidate under Sections 12 and 68 of the Omnibus Election Code (OEC) or Section 40 of the LGC. Similarly, however, the same ground is not particularly listed as a ground for petition for cancellation of COC under Section 78 of the OEC, in relation to Section 74 thereof. The mentioned provisions read:

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.

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

The debate in the categorization of the violation of the three-term limit stemmed from the statement of the candidate in his COC that “he is eligible to the office he seeks to be elected to.” The *ponencia* took this statement to embrace the candidate’s express declaration that he had not served the same position for three (3) consecutive terms. With all due respect, I believe it is reading beyond the plain meaning of the statement. The COC is a declaration by the candidate of his eligibility specifically that he possesses all the qualifications required by the office. The candidate is,

in effect, declaring that he possesses the minimum or basic requirements of the law for those intending to run for public office. These requirements are stated in the following provisions of the Constitution and the LGC:

Sections 3 and 6 of Article VI of the Constitution:

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

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

Sections 2 and 3 of Article VII of the Constitution:

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

Sec. 3. There shall be a Vice-President who shall have the same qualifications and term of office and be elected with and in the same manner as the President. He may be removed from office in the same manner as the President.

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Section 39 of the LGC:

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

x x x x

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

Basically, the qualifications for running for public office relate to age, residence, citizenship and status as registered voter. These facts are material as they are determinative of the fitness of the candidate for public office. In imposing these qualifications, the law seeks to confine the right to participate in the electoral race to individuals who have reached the age when they can seriously reckon the significance of the responsibilities they wish to assume and who are, at the same time, familiar with the current state and pressing needs of the community.

Thus, when a candidate declares in his COC that he is eligible to the office for which he seeks to be elected, he is attesting to the fact that he possesses all the qualifications to run for public office. It must be deemed to refer only to the facts which he expressly states in his COC, and not to all other facts or circumstances which can be conveniently subsumed under the term “eligibility” for the simple reason that they can affect one’s status of candidacy. To hold the contrary is to stretch the concept of “eligibility” and, in effect, add a substantial qualification before an individual may be allowed to run for public office.

On the other hand, the grounds for disqualification pertain to acts committed by an aspiring local servant, or to a circumstance, status or condition which renders him unfit for public service. Possession of any of the grounds for disqualification forfeits the candidate of the right to participate in the electoral race notwithstanding the fact he has all the qualifications required under the law for those seeking an elective post.

The violation of the three-term limit is a circumstance or condition which bars a candidate from running for public office. It is thus a disqualifying circumstance which is properly a ground for a petition for disqualification.

Section 44 of the LGC was properly applied in filling the permanent vacancy in the office of the mayor.

I agree with the *ponencia's* conclusion that Roderick Alcala (Alcala), the duly-elected Vice-Mayor should succeed to the office of the mayor. Section 44 of the LGC clearly states:

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

The Commission on Elections (COMELEC) *en banc* affirmed Ramon's disqualification on May 5, 2010. This eventuality could have given Castillo, the candidate who received the second highest number of votes, the right to be proclaimed to the office of the mayor. However, it must be noted that the COMELEC gave due course to Barbara Ruby Talaga's (Barbara) COC as substitute candidate for Ramon and was even proclaimed Mayor of Lucena City. It was only *after* the elections that a petition was filed to challenge Barbara's eligibility and was ruled upon by the COMELEC. Specifically, on January 11, 2011, the COMELEC Second Division dismissed the petition and the petition-in-intervention filed by Alcala. However, on May 20, 2011, the COMELEC *en banc* issued a Resolution, reversing the ruling of the Second Division, the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered:

1. REVERSING and SETTING SIDE 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 therefore;
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 LGC;

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Upon the finality of the foregoing resolution, a permanent vacancy was created in the office of the mayor which therefore must be filled in accordance with Section 44 of the LGC.

Castillo, the candidate who received the second highest number of votes, cannot be deemed to have won the elections. It is well-settled that the ineligibility of a candidate receiving majority votes does not entitle the eligible candidate receiving the next highest number of votes to be declared elected. A minority or defeated candidate cannot be deemed elected to the office. The votes intended for the disqualified candidate should not be considered null and void, as it would amount to disenfranchising the electorate in whom sovereignty resides.¹ The lone instance when the second placer can take the stead of a disqualified candidate was pronounced in *Labo v. COMELEC*,² viz:


[I]f the electorate fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety, would nonetheless cast their votes in favor of the ineligible candidate. In such case, 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 obtaining the next higher number of votes may be deemed elected.

Based on the circumstances obtaining in this case, Barbara's disqualification was not notoriously known in Lucena City since the COMELEC was only able to rule on her disqualification after the elections. Thus, during the election day, the electorate reasonably assumed that Barbara is a qualified candidate and that the votes they cast in her favor will not be misapplied. Little did they know that the candidate they voted for will eventually be disqualified and ousted out of office.

¹ *Gonzales v. COMELEC*, G.R. No. 192856, March 8, 2011, 644 SCRA 761.

² G.R. No. 105111, July 3, 1992, 211 SCRA 297.

In view of the foregoing, I vote to **DISMISS** the petitions.


BIENVENIDO L. REYES
Associate Justice