

G.R. No. 196804 (*Mayor Barbara Ruby C. Talaga v. Commission on Elections and Roderick Alcala*); **G.R. No. 197015** (*Philip M. Castillo v. Commission on Elections, Mayor Barbara Ruby C. Talaga and Roderick Alcala*)

Promulgated: October 09, 2012

CONCURRING OPINION



VELASCO, JR., J.:

In view of the opinions submitted, it is my view that there was *no valid substitution* of candidates for the mayoralty position in Lucena City between Ramon Talaga and his wife, Ruby Talaga. I likewise opine that considering the judgments on the *disqualification* of Ruben Talaga and on the validity of the *substitution became final only after the May 10, 2010 elections*, the laws of *succession in case of permanent vacancies* under *Section 44 of the Local Government Code* should apply.

First, *Section 77 of the Omnibus Election Code*¹ is clear that before a substitution of candidates for an elective position could be validly done, the official candidate of a registered or accredited political party should *die, withdraw* or must be *disqualified for any cause*. In the present case, the records will show that at the time Ruby C. Talaga filed her Certificate of Candidacy, or May 4, 2010, **there was still no ground for substitution** since the *judgment on Ramon Talaga's disqualification had not yet attained finality*.

Although the Decision of the Comelec was promulgated on April 19, 2010, the *five-day period for its execution or implementation was suspended* when Ramon Talaga filed a Motion for Reconsideration on April 21, 2010. This is clear under Section 2 of Rule 19 of the Comelec Rules of Procedure, which provides:

¹ BATAS PAMBANSA BILANG 881, 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. x x x



Section 2. *Period for Filing Motions for Reconsideration.* - A motion to reconsider a decision, resolution, order, or ruling of a Division shall be filed within five (5) days from the promulgation thereof. ***Such motion, if not proforma, suspends the execution or implementation of the decision, resolution, order or ruling.*** (Emphasis supplied)

It also appears that on the morning of May 4, 2012, or before Ruby Talaga filed her Certificate of Candidacy, Ramon Talaga filed a manifestation to withdraw his Motion for Reconsideration. However, this manifestation does not have any effect in determining the finality of an action for disqualification of a candidate. It is significant to note that under the Comelec Rules of Procedure, an action for disqualification of candidate is a Special Case or Special Action.² In relation thereto, Section 13 of Rule 18 of same rules provide that the finality of a judgment in a Special Action is based on the **date of promulgation, to wit:**

Section 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 resolutions 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. (Emphasis supplied)

Notably, the finality of the judgment of the Comelec is reckoned from the *date of the promulgation* and not from the date of receipt of the resolution, decision or order – which is the standard rule in non-election related cases. To my mind, the rationale for such requirement would manifest by relating the aforementioned provision with Section 5 of Rule 18 of the same Rules, which provides:

Section 5. *Promulgation.* - The **promulgation of a decision or resolution** of the Commission or a Division shall be made on a **date previously fixed**, of which

² Part V, Title B, Rule 23 of the COMELEC RULES OF PROCEDURE.

notice shall be served in advance upon the parties or their attorneys personally or by registered mail or by telegram. (Emphasis supplied)

It appears that because of the requirements of ‘advance notice’ and a ‘scheduled date’ of promulgation, there is an assurance that the parties to an election case would be present on the date of promulgation. Hence, the actual promulgation of a Comelec decision, order or resolution constitutes an actual notice to the parties.

In the present case, the five-day period in attaining finality judgment could have been reckoned from May 5, 2010 or the day when the Comelec En Banc issued an order dismissing the Motion for Reconsideration filed by Ramon Talaga. However, the records will show that the *parties were not notified of the promulgation of the said May 5, 2010 Decision*. In here, the notice of the May 5, 2010 Order of the Comelec En Banc was made only on the next day, or May 6, 2010 and was received by the parties or their counsels only on May 7, 2012 and May 13, 2010.³ Therefore, when the parties were not notified of the promulgation of the May 5, 2010 Order of the Comelec En Banc as required by the Comelec Rules, the judgment on Ramon Talaga’s disqualification could not be considered as final and executory as to them. Furthermore, even assuming arguendo the May 6, 2010 Notice was valid, the judgment would attain finality only after five-days from receipt thereof. Nevertheless, whether it was received on May 7 or May 13, the judgment on Ramon Talaga’s disqualification became final and executory after the May 10, 2010 Elections.

Considering further that Ramon Talaga’s disqualification became final after the May 10, 2010 Elections, it was only during that time that office of the Mayor of Lucena City became vacant. Since there is no question that Ramon’s disqualification to serve as City Mayor is permanent in character, the incumbent Vice-Mayor should serve as Mayor pursuant to Section 44 of the Local Government Code, which provides:

³ Rollo, p. 132.


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 x

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.

x x x x (Emphasis supplied)

In view of the foregoing, I concur with the *ponencia* of Justice Lucas P. Bersamin that it is the incumbent Vice-Mayor, Roderick Alcala, who should be the Mayor of Lucena City.



PRESBITERO J. VELASCO, JR.
Associate Justice