



Republic of the Philippines  
**Supreme Court**  
Manila

**EN BANC**

**OLIVIA DA SILVA CERAIFICA,**  
Petitioner,

**G.R. No. 205136**

Present:

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

- versus -

**COMMISSION ON ELECTIONS,**  
Respondent.

Promulgated:

DECEMBER 02, 2014

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**DECISION**

**PEREZ, J.**

For the consideration of the Court is the Special Civil Action for *Certiorari* under Rule 64 of the Revised Rules of Court, assailing the ruling of respondent Commission on Elections (Comelec) which cancelled the Certificate of Candidacy (COC) of Kimberly Da Silva Cerafica (Kimberly) and denied the substitution of Kimberly by petitioner Olivia Da Silva Cerafica (Olivia).

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On 1 October 2012, Kimberly filed her COC for Councilor, City of Taguig for the 2013 Elections. Her COC stated that she was born on 29 October 1992, or that she will be twenty (20) years of age on the day of the elections,<sup>1</sup> in contravention of the requirement that one must be at least twenty-three (23) years of age on the day of the elections as set out in Sec. 9 (c) of Republic Act (R.A.) No. 8487 (*Charter of the City of Taguig*).<sup>2</sup> As such, Kimberly was summoned to a clarificatory hearing due to the age qualification.

Instead of attending the hearing, Kimberly opted to file a sworn Statement of Withdrawal of COC on 17 December 2012.<sup>3</sup> Simultaneously, Olivia filed her own COC as a substitute of Kimberly. Owing to these events, the clarificatory hearing no longer pushed through.

In a Memorandum dated 18 December 2012, Director Esmeralda Amora-Ladra (Director Amora-Ladra) of the Comelec Law Department recommended the cancellation of Kimberly's COC, and consequently, the denial of the substitution of Kimberly by Olivia. Relying on Comelec Resolution No. 9551,<sup>4</sup> Director Amora-Ladra opined that it is as if no COC was filed by Kimberly; thus, she cannot be substituted.

In a Special *En Banc* Meeting of the Comelec on 3 January 2013,<sup>5</sup> the Comelec adopted the recommendation of Director Amora-Ladra, cancelled Kimberly's COC, and denied the substitution of Kimberly by Olivia as an effect of the cancellation of Kimberly's COC, *viz:*<sup>6</sup>

The Commission **RESOLVED**, as it hereby **RESOLVES**, to approve the foregoing recommendation of Director Esmeralda-Amora-Ladra, Law Department, as follows:

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\* On official leave.

\*\* Acting Chief Justice per Special Order No. 1898-A dated 2 December 2014.

\*\*\* On official leave.

\*\*\*\* No part, acted as Solicitor General.

<sup>1</sup> 13 May 2013.

<sup>2</sup> (c) The regular members of the sangguniang panlungsod and the sectoral representatives shall be elected as may be provided for by law. The elected member of the sangguniang panlungsod must be at least twenty-three (23) years of age on the day of the election, a resident of the City for at least one (1) year immediately preceding the day of the elections, and a qualified voter therein;

<sup>3</sup> *Rollo*, p. 26.

<sup>4</sup> TO REFUSE TO GIVE DUE COURSE TO and CANCEL THE CERTIFICATES OF CANDIDACY of those who, despite having known their apparent lack of qualification for being below the minimum age requirement imposed by the Constitution, still deliberately filed their COCs for Senator. We find no other justification other than that they have no genuine interest to run for senator but merely to put the election in mockery or disrepute.

<sup>5</sup> *Rollo*, pp. 23-25; Excerpt from the Minutes of the Special En Banc Meeting of the Comelec held on 3 January 2013.

<sup>6</sup> *Id.* at 25.

1. To **cancel** the Certificate of Candidacy (COC) of aspirant Kimberly Da Silva Cerafica without prejudice to any civil, criminal or administrative liability that she may have incurred pursuant to Section 14 of COMELEC Resolution 9518; and
2. To **deny** the substitution of Kimberly Da Silva Cerafica by Olivia Da Silva Cerafica as an effect of the cancellation of the COC of Kimberly.

Let the Law Department implement this resolution.

**SO ORDERED.**

Olivia then filed the present petition for *certiorari* with Prayer for the Issuance of a Temporary Restraining Order, Status *Quo Ante* Order, and/or Writ of Preliminary Mandatory Injunction, raising the following issues:<sup>7</sup>

I.

WHETHER PUBLIC RESPONDENT COMMISSION ON ELECTIONS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION AND CONTRARY TO LAW AND JURISPRUDENCE IN ISSUING THE ASSAILED MINUTE RESOLUTION RESULTING IN THE CANCELLATION OF THE CERTIFICATE OF CANDIDACY (COC) OF ASPIRANT KIMBERLY DA SILVA CERAIFICA AND THE DENIAL OF THE SUBSTITUTION OF KIMBERLY DA SILVA CERAIFICA BY OLIVIA DA SILVA CERAIFICA AS AN EFFECT OF THE CANCELLATION OF THE COC OF KIMBERLY.

II.

WHETHER PUBLIC RESPONDENT COMMISSION ON ELECTIONS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION AND CONTRARY TO LAW AND JURISPRUDENCE WHEN IT RULED THAT THERE WAS NO VALID SUBSTITUTION BY PETITIONER FOR KIMBERLY RESULTING IN THE *MOTU PROPRIO* DENIAL OF PETITIONER'S CERTIFICATE OF CANDIDACY.

III.

WHETHER PUBLIC RESPONDENT COMMISSION ON ELECTIONS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION AND CONTRARY TO LAW AND JURISPRUDENCE IN ISSUING THE ASSAILED RESOLUTION WITHOUT GIVING PETITIONER AN OPPORTUNITY TO BE HEARD, THEREBY RESULTING IN THE *MOTU PROPRIO* DENIAL

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<sup>7</sup>

Id. at 7-8.

OF THE SUBSTITUTION OF KIMBERLY DA SILVA CERAfica BY  
OLIVIA DA SILVA CERAfica.

In its Comment<sup>8</sup> filed on 22 April 2013, respondent Comelec argued that Olivia cannot substitute Kimberly as the latter was never an official candidate because she was not eligible for the post by reason of her age, and that, moreover, the COC that Kimberly filed was invalid because it contained a material misrepresentation relating to her eligibility for the office she seeks to be elected to.<sup>9</sup> The Comelec further averred that it can cancel Kimberly's COC *motu proprio* as it may look into patent defects in the COCs, such as Kimberly's failure to comply with the age requirement.<sup>10</sup>

In her Reply<sup>11</sup> filed on 10 May 2013, Olivia countered that although Kimberly may not be qualified to run for election because of her age, it cannot be denied that she still filed a valid COC and was, thus, an official candidate who may be substituted.<sup>12</sup> Olivia also claimed that there was no ground to cancel or deny Kimberly's COC on the ground of lack of qualification and material misrepresentation because she did not misrepresent her birth date to qualify for the position of councilor, and as there was no deliberate attempt to mislead the electorate, which is precisely why she withdrew her COC upon learning that she was not qualified.<sup>13</sup>

At the outset, we note that a verification with the Comelec database yields the finding that Olivia was not among the official candidates<sup>14</sup> for the 2013 Elections and, thus, was not voted for.<sup>15</sup> As such, a ruling on the present petition would no longer be of practical use or value. Even if we were to resolve the petition for the purpose of determining Olivia's legal status as a legitimate and qualified candidate for public office, such purpose has been rendered inconsequential as a result of the proclamation of the winning councilors for the 2013 elections.<sup>16</sup>

Be that as it may, the Court deems it opportune to address the merits of the case, if only to caution the Comelec against the precipitate cancellation of COCs.

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<sup>8</sup> Id. at 40-49.

<sup>9</sup> Id. at 45.

<sup>10</sup> Id. at 46.

<sup>11</sup> Id. at 55-60.

<sup>12</sup> Id. at 56.

<sup>13</sup> Id. at 57.

<sup>14</sup> <http://www.comelec.gov.ph/?r=Archives/RegularElections/2013NLE/Candidate/CertifiedListOfCandidates>. 22 August 2014.

<sup>15</sup> <http://www.comelec.gov.ph/?r=Archives/RegularElections/2013NLE/Results/citymuni2013>. 22 August 2014.

<sup>16</sup> *Garcia v. Comelec*, 328 Phil. 288, 292 (1996).

In *Albaña v. Comelec*,<sup>17</sup> we held that where the issues have become moot and academic, there is no justiciable controversy, thereby rendering the resolution of the same of no practical use or value. Nonetheless, courts will decide a question otherwise moot and academic if it is capable of repetition, yet evading review. In this case, we find it necessary to resolve the issues raised in the petition in order to prevent a repetition thereof and, thus, enhance free, orderly, and peaceful elections.

### VALID SUBSTITUTION

In declaring that Kimberly, being under age, could not be considered to have filed a valid COC and, thus, could not be validly substituted by Olivia, we find that the Comelec gravely abused its discretion.

Firstly, subject to its authority over nuisance candidates<sup>18</sup> and its power to deny due course to or cancel COCs under Sec. 78, Batas Pambansa (B.P.) Blg. 881, the Comelec has the ministerial duty to receive and acknowledge receipt of COCs.<sup>19</sup>

In *Cipriano v. Comelec*,<sup>20</sup> we ruled that the Comelec has no discretion to give or not to give due course to COCs. We emphasized that the duty of the Comelec to give due course to COCs filed in due form is ministerial in character, and that while the Comelec may look into patent defects in the COCs, it may not go into matters not appearing on their face. The question of eligibility or ineligibility of a candidate is thus beyond the usual and proper cognizance of the Comelec.

Section 77 of the Omnibus Election Code (B.P. Blg. 881) provides for the procedure of substitution of candidates, to wit:

**Sec. 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 election day of the election.

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<sup>17</sup> 478 Phil. 941, 949 (2004).

<sup>18</sup> Batas Pambansa Blg. 881, Sec. 69.

<sup>19</sup> Batas Pambansa Blg. 881, Sec. 76.

<sup>20</sup> 479 Phil. 677, 689 (2004).

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 candidate or, in case of candidates to be voted for by the entire electorate of the country, with the Commission.

Under the express provision of Sec. 77 of B. P. Blg. 881, not just any person, but only “an official candidate of a registered or accredited political party” may be substituted.<sup>21</sup> In the case at bar, Kimberly was an official nominee of the Liberal Party;<sup>22</sup> thus, she can be validly substituted.

The next question then is whether Olivia complied with all of the requirements for a valid substitution; we answer in the affirmative. First, there was a valid withdrawal of Kimberly’s COC after the last day for the filing of COCs; second, Olivia belongs to and is certified to by the same political party to which Kimberly belongs;<sup>23</sup> and third, Olivia filed her COC not later than mid-day of election day.<sup>24</sup>

In *Luna v. Comelec*,<sup>25</sup> where the candidate, who was also under age, withdrew his COC before election day and was substituted by a qualified candidate, we declared that such substitution was valid. The Court eloquently explained:

***Substitution of Luna for Hans Roger was Valid***

Luna contends that Hans Roger filed a valid certificate of candidacy and, subsequently, upon Hans Roger’s withdrawal of his certificate of candidacy, there was a valid substitution by Luna.

On the other hand, the COMELEC ruled that Hans Roger, being under age, could not be considered to have filed a valid certificate of candidacy and, therefore, is not a valid candidate who could be substituted by Luna.

When a candidate files his certificate of candidacy, the COMELEC has a ministerial duty to receive and acknowledge its receipt. Section 76 of the Omnibus Election Code (Election Code) provides:

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<sup>21</sup> *Miranda v. Abaya*, 370 Phil. 642, 657 (1999).

<sup>22</sup> *Rollo*, p. 23; Findings of fact of the Comelec as stated in the *Excerpt from the Minutes of the Special En Banc Meeting of the Commission on Elections Held on 3 January 2013*.

<sup>23</sup> *Id.* at 27; Accompanying Olivia’s COC is a Certificate of Nomination and Acceptance issued by the Chairperson of the Liberal Party of the Philippines, Taguig City.

<sup>24</sup> *Id.* at 22; Olivia filed her COC on 17 December 2013 or not later than mid-day of election day, 13 May 2013.

<sup>25</sup> 550 Phil. 284 (2007).

**Sec. 76. Ministerial duty of receiving and acknowledging receipt.** – The Commission, provincial election supervisor, election registrar or officer designated by the Commission or the board of election inspectors under the succeeding section shall have the ministerial duty to receive and acknowledge receipt of the certificate of candidacy.

In this case, when Hans Roger filed his certificate of candidacy on 5 January 2004, the COMELEC had the ministerial duty to receive and acknowledge receipt of Hans Roger's certificate of candidacy. Thus, the COMELEC had the ministerial duty to give due course to Hans Rogers certificate of candidacy.

On 15 January 2004, Hans Roger withdrew his certificate of candidacy. The Election Code allows a person who has filed a certificate of candidacy to withdraw the same prior to the election by submitting a written declaration under oath. There is no provision of law which prevents a candidate from withdrawing his certificate of candidacy before the election.

On the same date, Luna filed her certificate of candidacy as substitute for Hans Roger. Section 77 of the Election Code prescribes the rules on substitution of an official candidate of a registered political party who dies, withdraws, or is disqualified for any cause after the last day for the filing of certificate of candidacy. Section 77 of the Election Code provides:

**Sec. 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 election 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 candidate or, in case of candidates to be voted for by the entire electorate of the country, with the Commission.

Since Hans Roger **withdrew** his certificate of candidacy and the COMELEC found that Luna complied with all the procedural requirements for a valid substitution, Luna can validly substitute for Hans Roger.

**The COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in declaring that Hans Roger, being under age, could not be considered to have filed a valid certificate of candidacy and, thus, could not be validly substituted by Luna. The COMELEC may not, by itself, without the proper proceedings, deny due course to or cancel a certificate of candidacy filed in due form.** In *Sanchez vs. Del Rosario*, the Court ruled that the question of eligibility or ineligibility of a candidate for non-age is beyond the usual and proper cognizance of the COMELEC.

Section 74 of the Election Code provides that the certificate of candidacy shall state, among others, the date of birth of the person filing the certificate. Section 78 of the Election Code provides that in case a person filing a certificate of candidacy has committed false material representation, a verified petition to deny due course to or cancel the certificate of candidacy of said person may be filed at any time not later than 25 days from the time of filing of the certificate of candidacy.

**If Hans Roger made a material misrepresentation as to his date of birth or age in his certificate of candidacy, his eligibility may only be impugned through a verified petition to deny due course to or cancel such certificate of candidacy under Section 78 of the Election Code.**

In this case, there was no petition to deny due course to or cancel the certificate of candidacy of Hans Roger. The COMELEC only declared that Hans Roger did not file a valid certificate of candidacy and, thus, was not a valid candidate in the petition to deny due course to or cancel Luna's certificate of candidacy. In effect, the COMELEC, without the proper proceedings, cancelled Hans Roger's certificate of candidacy and declared the substitution by Luna invalid.

It would have been different if there was a petition to deny due course to or cancel Hans Roger's certificate of candidacy. For if the COMELEC cancelled Hans Roger's certificate of candidacy after the proper proceedings, then he is no candidate at all and there can be no substitution of a person whose certificate of candidacy has been cancelled and denied due course. However, Hans Roger's certificate of candidacy was never cancelled or denied due course by the COMELEC.

**Moreover, Hans Roger already withdrew his certificate of candidacy before the COMELEC declared that he was not a valid candidate. Therefore, unless Hans Roger's certificate of candidacy was denied due course or cancelled in accordance with Section 78 of the Election Code, Hans Roger's certificate of candidacy was valid and he may be validly substituted by Luna.<sup>26</sup>**  
(Emphases supplied.)

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<sup>26</sup>

Id. at 290-293.



### LACK OF DUE PROCESS

Moreover, in simply relying on the Memorandum of Director Amora-Ladra in cancelling Kimberly's COC and denying the latter's substitution by Olivia, and absent any petition to deny due course to or cancel said COC, the Court finds that the Comelec once more gravely abused its discretion.

The Court reminds the Comelec that, in the exercise of its adjudicatory or quasi-judicial powers, the Constitution<sup>27</sup> mandates it to hear and decide cases first by Division and, upon motion for reconsideration, by the *En Banc*.

Where a power rests in judgment or discretion, so that it is of judicial nature or character, but does not involve the exercise of functions of a judge, or is conferred upon an officer other than a judicial officer, it is deemed quasi-judicial.<sup>28</sup> As cancellation proceedings involve the exercise of quasi-judicial functions of the Comelec, the Comelec in Division should have first decided this case.

In *Bautista v. Comelec, et al.*,<sup>29</sup> where the Comelec Law Department recommended the cancellation of a candidate's COC for lack of qualification, and which recommendation was affirmed by the Comelec *En Banc*, the Court held that the Comelec *En Banc* cannot short cut the proceedings by acting on the case without a prior action by a division because it denies due process to the candidate. The Court held:

A division of the COMELEC should have first heard this case. The COMELEC en banc can only act on the case if there is a motion for reconsideration of the decision of the COMELEC division. Hence, the COMELEC en banc acted without jurisdiction when it ordered the cancellation of Bautista's certificate of candidacy without first referring the case to a division for summary hearing.

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Under Section 3, Rule 23 of the 1993 COMELEC Rules of Procedure, a petition for the denial or cancellation of a certificate of candidacy must be heard summarily after due notice. It is thus clear that cancellation proceedings involve the exercise of the quasi-judicial functions of the COMELEC which the COMELEC *in division* should first decide. **More so in this case where the cancellation proceedings**

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<sup>27</sup> Constitution, Art. IX-C, Section 3.

<sup>28</sup> *Cipriano v. Comelec*, supra note 21 at 691.

<sup>29</sup> 460 Phil. 459 (2003).


originated not from a petition but from a report of the election officer regarding the lack of qualification of the candidate in the *barangay* election. The COMELEC *en banc* cannot short cut the proceedings by acting on the case without a prior action by a division because it denies due process to the candidate.<sup>30</sup>

(Emphasis supplied.)

The determination of whether a candidate is eligible for the position he is seeking involves a determination of fact where parties must be allowed to adduce evidence in support of their contentions.<sup>31</sup> We thus caution the Comelec against its practice of impetuous cancellation of COCs via minute resolutions adopting the recommendations of its Law Department when the situation properly calls for the case's referral to a Division for summary hearing.

**WHEREFORE**, premises considered, with the cautionary counsel that cancellation of certificate of candidacy is a quasi-judicial process, and accordingly is heard by the Commission on Elections in Division and *En Banc* on appeal, we **DISMISS** the present petition for being moot and academic.

**SO ORDERED.**

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

WE CONCUR:

(On official leave)  
**MARIA LOURDES P. A. SERENO**  
Chief Justice


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<sup>30</sup> Id. at 475-477.

<sup>31</sup> *Cipriano v. Comelec*, supra note 21 at 691.



**ANTONIO T. CARPIO**  
Acting Chief Justice

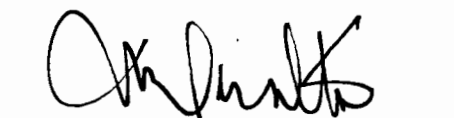


**PRESBITERO J. VELASCO, JR.**  
Associate Justice



**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

(On Official Leave)  
**ARTURO D. BRION**  
Associate Justice



**DIOSDADO M. PERALTA**  
Associate Justice



**LUCAS P. BERSAMIN**  
Associate Justice



**MARIANO C. DEL CASTILLO**  
Associate Justice



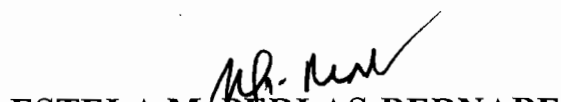
**MARTIN S. VILLARAMA, JR.**  
Associate Justice



**JOSE CATRAL MENDOZA**  
Associate Justice



**BIENVENIDO L. REYES**  
Associate Justice



**ESTELA M. PERLAS-BERNABE**  
Associate Justice



**MARVIC M.V. F. LEONEN**  
Associate Justice

(No part)  
**FRANCIS H. JARDELEZA**  
Associate Justice

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

A handwritten signature in black ink, appearing to read "Antonio T. Carpio", with a stylized flourish at the end.

**ANTONIO T. CARPIO**  
Acting Chief Justice