

**JOSE V. LORETO, IN REPRESENTATION OF HIS MINOR CHILD JOSE P. LORETO III, PETITIONERS, VS. RENATO BRION, RODOLFO BUTALID AND REYNALDO ATIENZA, IN THEIR CAPACITY AS CHAIRMAN AND M...***G.R. No. 130681. July 29, 1999*

Ponente: GONZAGA-REYES, J.

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In this petition for review on certiorari Jose V. Loreto, III questions the decision of the Regional Trial Court, Branch 14, Baybay, Leyte in Special Civil Action No.B-1302 dismissing his petition for mandamus to compel the chairman and members of the Board of Election Supervisors of the Pambansang Pederasyon Ng Mga Sangguniang Kabataan of Baybay, Leyte Chapter to proclaim him as the winner in the elections of July 5, 1996 for President of the Pambayang Federasyon Ng Mga Sangguniang Kabataan, Baybay, Leyte Chapter.

Jose Loreto III ran for president of the Pambayang Federasyon Ng Mga Sangguniang Kabataan, Baybay, Leyte Chapter in the July 5, 1996 elections. The other candidates were Paul Ian Veloso and Ruphil Bañoc.

On July 3, 1996, a pre-election protest against Paul Ian Veloso was lodged before the Board of Election Supervisors composed of respondents herein for violation of DILG Memorandum Circular No. 96-115, and COMELEC Resolution No. 2834, prohibiting certain acts of campaigning in the Sangguniang Kabataan Pederasyon elections.

In the July 5, 1996 elections, Paul Ian Veloso obtained the highest number of votes but his proclamation as winner was suspended as the evidence of his guilt in the pre-election protest was strong. Jose Loreto, III garnered the second highest number of votes.

On August 6, 1996, the Board of Election Supervisors promulgated a Resolution disqualifying candidate Paul Ian Veloso and ruled that the elected Vice President of the chapter should assume the office of President. The resolution became final and executory.

Petitioner Loreto took his oath of office and discharged the duties and functions of President of the SK Municipal Federation but was unable to collect the salaries pertaining to the office on account of the absence of the required proclamation papers.

Hence, petitioner filed a petition for mandamus in the Regional Trial Court to compel the Board of Election Supervisors to direct the local election committee to proclaim him.

The Court a quo dismissed the petition on the ground that petitioner Loreto had lost in the SK Pederasyon elections and the fact that the winning candidate was later on disqualified and his being a second placer did not entitle him to be proclaimed as President.

Petitioner Loreto filed this petition for review on certiorari on an alleged pure question of law. The lone issue is as

follows:

"Whether or not the trial court was correct in declaring that petitioner was not qualified to assume the presidency of the Sangguniang Kabataan Chapter of Baybay, Leyte in lieu of a disqualified candidate since the petitioner is a mere second placer to the deposed winner."

Petitioner relies on Section 6 of Republic Act No. 6646 which provides that "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," and claims that in view of the final judgment declaring Paul Ian Veloso's disqualification, the votes that were obtained by Veloso fall in the category of stray or invalid votes. When he was disqualified, it was as if he was no candidate at all in the eyes of the law and the effects of the final judgment of disqualification retroacts to the time the case was filed.

In its Comment, public respondent cites the doctrine laid down in a long line of cases that a second placer cannot be considered the winner in place of a disqualified winning candidate.

In his reply, petitioner stresses that nowhere in Section 6 of R.A. 6646 is it mandated that the protestee be disqualified by final judgment prior to or before the date of election. On the contrary, the fact that the provision mandates that votes cast for a candidate disqualified by final judgment be not counted presupposes that an election has already been held.

Public respondent counterargues in its rejoinder that it is immaterial whether the petition for disqualification against a candidate was filed before the elections or after the elections as the subsequent finding that a candidate is disqualified cannot retroact to the date of the elections so as to invalidate the votes cast for him. Hence, the votes cast in favor of the disqualified winning candidate will still be valid and the second placer does not become the automatic winner.

The question raised in the instant petition is not new. As early as *Geronimo vs. Ramos*,<sup>[1]</sup> this Court has held that:

"The fact that the candidate who obtained the highest number of votes is later declared to be disqualified or not eligible for the office to which he was elected does not necessarily entitle the candidate who obtained the second highest number of votes to be declared the winner of the elective office. The votes cast for a dead, disqualified or non-eligible person may not be valid to vote the winner into office or maintain him there. However, in the absence of a statute which clearly asserts a contrary political and legislative policies on the matter, if the votes were cast in the sincere belief that the candidate was alive, qualified, or eligible, they should not be treated as stray, void or meaningless"<sup>[2]</sup>

The doctrine was reiterated in *Labo, Jr. vs. COMELEC*,<sup>[3]</sup> (which reversed the earlier ruling in *Santos vs. COMELEC*, 137 SCRA 140) and in the cases of *Abella vs. COMELEC*,<sup>[4]</sup> and *Labo, Jr. vs. COMELEC*.<sup>[5]</sup> The Court in the first cited case succinctly restated the principle as follows:

"The rule therefore, is: the ineligibility of a candidate receiving majority votes does not entitle the eligible candidate receiving the highest number of votes to be declared elected. A minority or defeated candidate cannot be deemed elected to the office."<sup>[6]</sup>

The rationale for the rule is explained in *Benito vs. COMELEC*<sup>[7]</sup> as follows:

"For to allow the defeated and repudiated candidate to take over the mayoralty despite his rejection by the electorate is to disenfranchise the electorate without any fault on their part and to undermine the importance and meaning of democracy and the people's right to elect officials of their choice."<sup>[8]</sup>

and more emphatically in *Aquino vs. COMELEC*,<sup>[9]</sup> thus:

"x x x We cannot, in another shift of the pendulum subscribe to the contention that the runner-up in an election in which the winner has been disqualified is actually the winner among the remaining qualified candidates because this clearly represents a minority view supported only by a scattered number of obscure American state and English court decisions. These decisions neglect the possibility that the runner-up though obviously qualified, could receive votes so measly and insignificant in number that the votes they receive would be tantamount to rejection. Theoretically, the 'second placer' could receive just one vote. In such a case, it is absurd to proclaim the totally repudiated candidate as the voters' choice. Moreover, even in instances where the votes received by the second placer may not be considered numerically insignificant voters preferences are nonetheless so volatile and unpredictable that the result among qualified candidates, should the equation change because of the disqualification of an ineligible candidate, would not be self-evident. Absence of the apparent though ineligible winner among no choices could lead to a shifting of votes to candidates other than the second placer. By any mathematical formulation, the runner-up in an election cannot be construed to have obtained the majority or plurality of votes cast where an 'ineligible' candidate has garnered either a majority or plurality of the votes."

The doctrine was last reiterated in the recent case of Reyes vs. COMELEC.[10]

We find no cogent reason to reexamine or disturb the rule already firmly settled in the above-cited jurisprudence which rejected the contention of petitioner herein that he should be considered the first among qualified candidates. The court a quo correctly held that the second placer lost the elections and was repudiated by either a majority or plurality of voters. To rule otherwise is to impose what is an unclear expression of the voters' will.

As regards the contentions of petitioner that the votes cast in favor of Paul Ian Veloso should be treated as stray, void or meaningless, and that the subsequent finding that he is disqualified should retroact to the date of the elections so as to invalidate the votes cast for him, these were squarely rejected in Reyes vs. COMELEC,[11] wherein it was pointed out that the votes cast for the disqualified candidate are presumed to have been cast in the belief that he is qualified.

We find that the court a quo did not err in relying on the doctrine enunciated in the cases cited to support the dismissal of this petition for mandamus and its refusal to declare that petitioner is the winning candidate in the Sangguniang Kabataan elections in Baybay, Leyte.

WHEREFORE, the petition is dismissed for lack of merit.

**SO ORDERED.**

Davide, Jr., C.J., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, and Ynares-Santiago, JJ., concur.  
Purisma, J., in the result.

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**[1] 136 SCRA 435.**

[2] 136 SCRA 435, at p. 447.

**[3] 176 SCRA 1.**

**[4] 201 SCRA 253.**

**[5] 211 SCRA 300.**

[6] at p. 311.

**[7] 235 SCRA 436.**

[8] at pp. 441-442.

**[9] 248 SCRA 400.**

**[10] 254 SCRA 514.**

[11] *supra*.

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