

## JOEL G. MIRANDA, PETITIONER, VS. ANTONIO M. ABAYA AND THE COMMISSION ON ELECTIONS, RESPONDENTS.

*G.R. No. 136351. July 28, 1999*

Ponente: MELO, J.

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### MELO, J.:

Before us is a petition for certiorari with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction questioning the resolution of the Comelec En Banc dated December 8, 1998 in SPA Case No. 98-288 which disposed:

ACCORDINGLY, judgment is hereby rendered to:

- AMEND and RECTIFY the dispositive portion of the Resolution of the Commission (First Division) in SPA No. 98-019 promulgated on May 5, 1998, to read as follows:

"WHEREFORE, in view of the foregoing, the Commission (First Division) GRANTS the Petition. Respondent JOSE "PEMPE" MIRANDA's certificate of candidacy for the position of mayor of Santiago City in the May 11, 1998 national and local elections is hereby DENIED DUE COURSE AND/OR CANCELLED.

SO ORDERED."

- ANNUL the election and proclamation of respondent JOEL G. MIRANDA as mayor of Santiago City in the May 11, 1998 election and CANCEL the Certificate of Canvass and Proclamation (C.E. form 25) issued therefor;
- DIRECT THE City board of Canvassers of Santiago City to RECONVENE, PREPARE a new certificate of canvass & proclamation and PROCLAIM the winning candidate among those voted upon as the duly elected mayor of Santiago City in the May 11, 1998 election; and
- DIRECT the Clerk of Court of the Commission to furnish copies of this Decision 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 Panglunsod of Santiago City.

### SO ORDERED.

(pp. 90-91, Rollo.)

The aforementioned resolution dated December 8, 1998 reversed and set aside the earlier resolution of the First Division of the Comelec dated May 16, 1998, dismissing private respondent's petition to declare the substitution of Jose "Pempe" Miranda by petitioner as candidate for the City of Santiago's mayoralty post void.

Briefly, the pertinent factual backdrop is summarized as follows:

On March 24, 1998, Jose "Pempe" Miranda, then incumbent mayor of Santiago City, Isabela, filed his certificate of candidacy for the same mayoralty post for the synchronized May 11, 1998 elections.

On March 27, 1998, private respondent Antonio M. Abaya filed a Petition to Deny Due Course to and/or Cancel Certificate of Candidacy (pp. 26-33, Rollo), which was docketed as SPA No. 98-019. The petition was GRANTED by the Comelec in its resolution dated May 5, 1998 (pp. 36-43, Rollo). The Comelec further ruled to DISQUALIFY Jose "Pempe" Miranda.

On May 6, 1998, way beyond the deadline for filing a certificate of candidacy, petitioner Joel G. Miranda filed his certificate of candidacy for the mayoralty post, supposedly as a substitute for his father, Jose "Pempe" Miranda.

During the May 11, 1998 elections, petitioner and private respondent vied for the mayoralty seat, with petitioner garnering 22,002 votes, 1,666 more votes than private respondent who got only 20, 336 votes.

On May 13, 1998, private respondent filed a Petition to Declare Null and Void Substitution with Prayer for Issuance of Writ of Preliminary Injunction and/or Temporary Restraining Order, which was docketed as SPA No. 98-288. He prayed for the nullification of petitioner's certificate of candidacy for being void ab initio because the certificate of candidacy of Jose "Pempe" Miranda, whom petitioner was supposed to substitute, had already been cancelled and denied due course.

On May 16, 1998, Comelec's First Division dismissed SPA No. 98-288 motu proprio (pp. 57-61, Rollo). Private respondent moved for reconsideration (pp. 62-72, Rollo). On December 8, 1998, the Comelec En Banc rendered the assailed decision aforequoted, resolving to GRANT the motion for reconsideration, thus nullifying the substitution by petitioner Joel G. Miranda of his father as candidate for the mayoralty post of Santiago City.

On December 9, 1998, petitioner sought this Court's intercession via a petition for certiorari, with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction. On December 11, 1998, the Court resolved to issue a temporary restraining order and to require respondents to comment on the petition. On December 14, 1998, private respondent filed his Comment (pp. 140-187 and 188-234, Rollo) and on February 16, 1999, the Comelec, through its counsel, the Solicitor General, filed its Comment (pp. 254-265, Rollo). The Court required petitioner to file a consolidated reply within 10 days from notice, but petitioner twice asked for an extension of the period. Without granting the motions for extension of time to file consolidated reply, the Court decided to resolve the controversy in favor of petitioner.

Tersely, the issues in the present case may be summarized as follows:

- Whether the annulment of petitioner's substitution and proclamation was issued without jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction; and
- Whether the order of the Comelec directing the proclamation of the private respondent was issued with grave abuse of discretion amounting to lack of jurisdiction.

The Court finds neither lack of jurisdiction nor grave abuse of discretion attended the annulment of the substitution and proclamation of petitioner.

On the matter of jurisdiction, there is no question that the case at hand is within the exclusive original jurisdiction of the Comelec. As early as in *Herrera vs. Baretto* (25 Phil. 245 [1913]), this Court had occasion to apply the following principles:

Jurisdiction is the authority to hear and determine a cause--the right to act in a case. Since it is the power to hear and determine, it does not depend either upon the regularity of the exercise of that power or upon the rightfulness of the decision made. Jurisdiction should therefore be distinguished from the exercise of jurisdiction. The authority to decide a cause at all, and not the decision rendered therein, is what makes up jurisdiction. Where there is jurisdiction over the subject matter, as we have said before, the decision of all other questions arising in the case is but an exercise of that jurisdiction.

(p. 251)

On the issue of soundness of the disposition in SPA No. 98-288, the Court finds that the Comelec's action nullifying the substitution by and proclamation of petitioner for the mayoralty post of Santiago City, Isabela is proper and legally sound.

Petitioner insists that the substitution at bar is allowed under Section 77 of the Omnibus Election Code which provides:

SEC. 77. Candidates in case of death, disqualification or withdrawal. -- 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.

Petitioner capitalizes on the fact that the Comelec ruled to disqualify Jose "Pempe" Miranda in the May 5, 1998 resolution and he heavily relies upon the above-quoted provision allowing substitution of a candidate who has been disqualified for any cause.

While there is no dispute as to whether or not a nominee of a registered or accredited political party may substitute for a candidate of the same party who had been disqualified for any cause, this does not include those cases where the certificate of candidacy of the person to be substituted had been denied due course and cancelled under Section 78 of the Code.

Expressio unius est exclusio alterius. While the law enumerated the occasions where a candidate may be validly substituted, there is no mention of the case where a candidate is excluded not only by disqualification but also by denial and cancellation of his certificate of candidacy. Under the foregoing rule, there can be no valid substitution for the latter case, much in the same way that a nuisance candidate whose certificate of candidacy is denied due course and/or cancelled may not be substituted. If the intent of the lawmakers were otherwise, they could have so easily and conveniently included those persons whose certificates of candidacy have been denied due course and/or cancelled under the provisions of Section 78 of the Code.

More importantly, under the express provisions of Section 77 of the Code, not just any person, but only "an official candidate of a registered or accredited political party" may be substituted. In *Bautista vs. Comelec* (G.R. No. 133840, November 13, 1998) this Court explicitly ruled that "a cancelled certificate does not give rise to a valid candidacy" (p.13).

A person without a valid certificate of candidacy cannot be considered a candidate in much the same way as any person who has not filed any certificate of candidacy at all can not, by any stretch of the imagination, be a candidate at all.

The law clearly provides:

SEC. 73. Certificate of candidacy -- No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed herein.

By its express language, the foregoing provision of law is absolutely mandatory. It is but logical to say that any

person who attempts to run for an elective office but does not file a certificate of candidacy, is not a candidate at all. No amount of votes would catapult him into office. In *Gador vs. Comelec* (95 SCRA 431 [1980]), the Court held that a certificate of candidacy filed beyond the period fixed by law is void, and the person who filed it is not, in law, a candidate. 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. No amount of votes should entitle him to the elective office aspired for.

The evident purposes of the law in requiring the filing of certificates of candidacy and in fixing the time limit therefor are: (a) to enable the voters to know, at least sixty days before the regular election, the candidates among whom they are to make the choice, and (b) to avoid confusion and inconvenience in the tabulation of the votes cast. For if the law did not confine the choice or election by the voters to the duly registered candidates, there might be as many persons voted for as there are voters, and votes might be cast even for unknown or fictitious persons as a mark to identify the votes in favor of a candidate for another office in the same election. (*Monsale vs. Nico*, 83 Phil. 758 [1949])

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.

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.

Also, under *ejusdem generis* rule, where a general word or phrase (such as "disqualification for any cause" in this case) follows an enumeration of particular and specific words of the same class (such as the words "dies" and "withdraws" in the instant case) or where the latter follow the former, the general word or phrase is to be construed to include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned (see: *Vera vs. Cuevas*, 90 SCRA 379 [1979]). A deceased candidate is required to have duly filed a valid certificate of candidacy, otherwise his political party would not be allowed to field a substitute candidate in his stead under Section 77 of the Code. In the case of withdrawal of candidacy, the withdrawing candidate is required to have duly filed a valid certificate of candidacy in order to allow his political party to field a substitute candidate in his stead. Most reasonable it is then, under the foregoing rule, to hold that a valid certificate of candidacy is likewise an indispensable requisite in the case of a substitution of a disqualified candidate under the provisions of Section 77 of the Code, just as it is in the two previous instances.

Furthermore, *interpretatio talis in ambiguis semper freinda est, ut eviatur inconveniens et absurdum*, meaning, where there is ambiguity, such interpretation as will avoid inconvenience and absurdity shall in all cases be adopted. To include those disqualified candidates whose certificate of candidacy had likewise been denied due course and/or cancelled among those who may be substituted under Section 77 of the Omnibus Election Code, leads to the absurdity where a substitute is allowed to take the place of somebody who had not been a candidate in the first place--a person who did not have a valid certificate of candidacy prior to substitution. *Nemo dat quod non habet*. What right can a non-candidate pass on to his substitute? Clearly, there is none because no one can give what he does not have.

Even on the most basic and fundamental principles, it is readily understood that the concept of a substitute presupposes the existence of the person to be substituted, for how can a person take the place of somebody who

does not exist or who never was. The Court has no other choice but to rule that in all the instances enumerated in Section 77 of the Omnibus Election code, the existence of a valid certificate of candidacy seasonably filed is a requisite sine qua non.

All told, a disqualified candidate may only be substituted if he had a valid certificate of candidacy in the first place because, if the disqualified candidate did not have a valid and seasonably filed certificate of candidacy, he is and was not a candidate at all. If a person was not a candidate, he cannot be substituted under Section 77 of the Code. Besides, if we were to allow the so-called "substitute" to file a "new" and "original" certificate of candidacy beyond the period for the filing thereof, it would be a crystalline case of unequal protection of the law, an act abhorred by our Constitution.

From the foregoing discussion it is evident that the controversy at hand is not a simple case of hair-splitting. A candidate may not be qualified to run for election but may have filed a valid certificate of candidacy. Another candidate may likewise be not qualified and at the same time not have a valid certificate of candidacy, for which reason, said certificate of candidacy is also cancelled and/or denied due course. Or, a third candidate may be qualified but, his certificate of candidacy may be denied due course and/or cancelled. This is possible because the grounds for disqualification (see: Omnibus Election Code, Section 68 -- Disqualifications) are totally separate and distinct from the grounds for cancellation and/or denying due course to a certificate of candidacy (Ibid., Section 69-- nuisance candidates; and Section 78 -- material misrepresentation). Only the candidate who had a valid certificate of candidacy may be substituted.

The question to settle next is whether or not aside from Joel "Pempe" Miranda being disqualified by the Comelec in its May 5, 1998 resolution, his certificate of candidacy had likewise been denied due course and cancelled.

The Court rules that it was.

Private respondent's petition in SPA No. 98-019 specifically prayed for the following:

WHEREFORE, it is respectfully prayed that the Certificate of Candidacy filed by respondent for the position of Mayor for the City of Santiago be not given due course and/or cancelled.

Other reliefs just and equitable in the premises are likewise prayed for.

(Rollo, p. 31; Emphasis ours.)

In resolving the petition filed by private respondent specifying a very particular relief, the Comelec ruled favorably in the following manner:

WHEREFORE, in view of the foregoing, the Commission (FIRST DIVISION) GRANTS the Petition. Respondent JOSE "Pempe" MIRANDA is hereby DISQUALIFIED from running for the position of mayor of Santiago City, Isabela, in the May 11, 1998 national and local elections.

SO ORDERED.

(p.43, Rollo; Emphasis ours.)

From a plain reading of the dispositive portion of the Comelec resolution of May 5, 1998 in SPA No. 98-019, it is sufficiently clear that the prayer specifically and particularly sought in the petition was GRANTED, there being no qualification on the matter whatsoever. The disqualification was simply ruled over and above the granting of the specific prayer for denial of due course and cancellation of the certificate of candidacy. It may be stressed at this instance that the legal consequences of this May 5, 1998 resolution are independent of the issue of whether or not the Comelec was correct in reviving SPA No. 98-019 by consolidating it with SPA No. 98-288 in its

December 8, 1998 resolution.

As regards the procedural matter in the present petition for certiorari, the following considerations are also in point:

It may be relevantly stressed that the review powers of the Supreme Court over decisions of the Constitutional Commissions, in general, and the Commission on Elections, in particular, were rather particularly defined and "limited" by the 1987 Constitution, as they were also circumscribed in the 1973 Constitution, to a petition for review on certiorari under Rule 65. In *Dario vs. Mison* (176 SCRA 84 [1989]), the Court held:

. . . We affirm the teaching of *Aratuc vs. Commission of Elections*, 88 SCRA 251 [1979]) -- as regards recourse to this Court with respect to rulings of the Civil Service Commission--which is that judgments of the Commission may be brought to the Supreme Court through certiorari alone, under Rule 65 of the Rules of Court.

In *Aratuc*, we declared:

It is at once evident from these constitutional and statutory modifications that there is a definite tendency to enhance and invigorate the role of the Commission on Elections as the independent constitutional body charged with the safeguarding of free, peaceful and honest elections. The framers of the new Constitution must be presumed to have definite knowledge of what it means to make the decisions, orders and rulings of the Commission "subject to review by the Supreme Court." And since instead of maintaining that provision intact, it ordained that the Commission's actuations be instead "brought to the Supreme Court on certiorari", We cannot insist that there was no intent to change the nature of the remedy, considering that the limited scope of certiorari, compared to a review, is well known in remedial law.

x x x

It should also be noted that under the new Constitution, as under the 1973 Charter, "any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari," which, as *Aratuc* tells us, "technically connotes something less than saying that the same 'shall be subject to review by the Supreme Court,' which in turn suggests an appeal by review by petition for review under Rule 45. Therefore, our jurisdiction over cases emanating from the Civil Service Commission is limited to complaints of lack or excess of jurisdiction or grave abuse of discretion tantamount to lack or excess of jurisdiction, complaints that justify certiorari under Rule 65.

(pp. 111-112)

To emphasize this procedural point, then Commissioner, later to become a distinguished Member of this Court, Mr. Justice Florenz Regalado responded to Commissioner Bernas' query during the deliberations of the 1987 Constitution thusly:

FR. BERNAS. So, for purposes of the record, now, what is the intention of the Committee? What are the grounds for certiorari?

MR. REGALADO. The Committee refers specifically to a technical term of review by certiorari would be relying on the provision of Rule XLV [Should be LXV] of the Rules of Court that laid down the three grounds. (I RECORD OF THE CONSTITUTIONAL COMMISSION, p. 539, as cited in Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 1996 Edition, p. 903.)

Thus, we have to be guided by jurisprudence relating to review by certiorari under Rule 65. Generally, certiorari lies where a court has acted without or in excess of jurisdiction or with grave abuse of discretion.

"Without jurisdiction" refers to an absolute want of jurisdiction; "excess of jurisdiction" refers to the case where the court has jurisdiction, but it transcended the same or acted without any statutory authority; "grave abuse of

discretion" implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.

Even assuming for the sake of argument that the Comelec committed an error in the exercise of its jurisdiction in the present case, such is not within the province of certiorari, as a remedial measure, to correct. The only issue that may be taken cognizance of in the present case is whether or not the Comelec committed grave abuse of discretion in rendering the assailed decision.

It is well-settled that an act of a court or tribunal may only be considered to have been done in grave abuse of discretion when the same was performed in a capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility (*Intestate Estate of Carmen de Luna vs. Intermediate Appellate Court*, 170 SCRA 246 [1989]; *Litton Mills vs. Galleon Traders*, 163 SCRA 489 [1988]; *Butuan Bay Export Co. vs. Court of Appeals*, 97 SCRA 297 [1980]). An error of judgment committed in the exercise of its legitimate jurisdiction is not the same as "grave abuse of discretion". An abuse of discretion is not sufficient by itself to justify the issuance of a writ of certiorari. The abuse must be grave and patent, and it must be shown that the discretion was exercised arbitrarily and despotically (*Soriano vs. Atienza*, 171 SCRA 284 [1989]).

Petitioner posits that the Comelec committed grave abuse of discretion when it annulled the substitution by and proclamation of petitioner, who under Section 77 of the Omnibus Election Code, was allowed to substitute for disqualified the candidate Jose "Pempe" Miranda. Petitioner also contends that it was an act of grave abuse of discretion for the Comelec to direct the proclamation of private respondent as the winning candidate in the May 11, 1998 election.

Petitioner further faults the Comelec for amending the dispositive portion of its resolution in SPA No. 98-019, which was not elevated to it on review, the same having already attained finality by then.

While it may be conceded that the Comelec stepped overboard and acted in excess of its jurisdiction when it *motu proprio* took cognizance of SPA No. 98-019, the decision in which was by then already final, it does not necessarily follow that the Comelec also committed grave abuse of discretion in resolving to grant private respondent's motion for reconsideration by nullifying the substitution of petitioner Joel G. Miranda. Evidently, what is under review before us in this certiorari proceedings is SPA No. 98-288, and not SPA No. 98-019.

The question to answer is: will the Comelec's act which may constitute an excess of jurisdiction in SPA No. 98-019 be tantamount to an act of grave abuse of discretion in its judgment in the separate and distinct case of SPA No. 98-288 as well? Clearly, *non sequitur*. SPA No. 98-288 should be judged on its own accord, and not under the shadow of SPA No. 98-019.

Comelec committed no grave abuse of discretion in resolving SPA No. 98-288 in favor of private respondent. As earlier pointed out, the result in the dispositive portion of the December 8, 1998 resolution pertaining to the issues involved in SPA No. 98-288 is correct insofar as it annulled the election and proclamation of Joel G. Miranda. But even assuming for the sake of argument that it is not, still, this supposed error does not constitute grave abuse of discretion which may be annulled and reversed in the present petition for certiorari.

As earlier elucidated too, the crux of the Comelec's disposition in SPA No. 98-288 is the fact that former candidate Jose "Pempe" Miranda's certificate of candidacy was denied due course and cancelled. There is no dispute that the complaint or petition filed by private respondent in SPA No. 98-019 is one to deny due course and to cancel the certificate of candidacy of Jose "Pempe" Miranda (Rollo, pp. 26-31). There is likewise no question

that the said petition was GRANTED without any qualification whatsoever. It is rather clear, therefore, that whether or not the Comelec granted any further relief in SPA No. 98-019 by disqualifying the candidate, the fact remains that the said petition was granted and that the certificate of candidacy of Jose "Pempe" Miranda was denied due course and cancelled. In fact, it was not even necessary for the Comelec to reiterate this in its December 8, 1998 resolution. At best, the Comelec's motu proprio act of resurrecting SPA No. 98-019 should be treated as a mere surplusage. The fact that the certificate of candidacy of Joel "Pempe" Miranda was denied due course and cancelled did not depend on the en banc resolution dated December 8, 1998 of the Comelec. It stems from the fact that the May 5, 1998 resolution GRANTED private respondent's Petition to Deny Due Course to and/or Cancel Certificate of Candidacy.

Verily, there is clear basis to find that there indeed was a blatant misrepresentation in the instant case and that it was a valid ground for the granting of the petition in SPA No. 98-019. Also, there appears to be sound basis to rule that a certificate of candidacy which has been denied due course on account of misrepresentation is, in every legal contemplation, no certificate at all. Ergo, there is nothing to substitute. If this judgment, rendered in the Comelec's rightful exercise of its jurisdiction in SPA No. 98-288 may, at all, be considered flawed, this blemish would only constitute an error of judgment and definitely not grave abuse of discretion. And, of course, errors of judgment may not be corrected by certiorari.

It may be noted that Commissioner Flores raised this supposed error in her dissenting opinion (pp. 93-99, Rollo). However, her legal opinion failed to convince the majority of the collegiate body and was not adopted by the Commission en banc. This Court in the present certiorari proceedings cannot substitute its judgment for that of the Comelec without violating the Constitution and the Rules of Court on the matter. The Comelec's decision is not subject to appeal to this Court. We may only strike out a Comelec decision if it was rendered without jurisdiction, in excess thereof, or with grave abuse of discretion amounting to lack of jurisdiction.

The Court cannot accede to the reasoning that this Court should now acquiesce and submit to the sovereign will of the electorate, as expressed by their votes. We should always be reminded that ours is a government of laws not of men. If this Court should fold its arms and refuse to apply the law at every "clamor" of the majority of the supposed constituency, where shall order and justice lie? Without the least intention to degrade, where shall "people power" end, and where shall "law and justice" begin? Would the apparent results of the canvassing of votes justify this Court in refusing to apply the law instead? The answers to the foregoing are obvious. The Court cannot choose otherwise but to exercise its sacred duty to uphold the Constitution and the laws of the Republic for and under which it exists. Besides, only history will discern whether Jose "Pempe" Miranda's filing of a certificate of candidacy for a 4th term and the intended substitution by his son was a ploy to perpetrate the Mirandas in power by way of a political dynasty disdained and abhorred by our Constitution which declared:

SEC. 26. The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law.

(Article II, 1987 Constitution)

The invalidation of petitioner's supposed substitution of Jose "Pempe" Miranda brings about the disqualification of petitioner in the mayoralty race. In this regard, what was said in *Nolasco vs. Commission on Elections* (275 SCRA 763 [1997]) may be recalled:

Our case law is now settled that in a mayoralty election, the candidate who obtained the second highest number of votes, in this case Alarilla, cannot be proclaimed winner in case the winning candidate is disqualified. Thus, we reiterated the rule in the fairly recent case of *Reyes v. Comelec* (254 SCRA 514 [1996]), viz.:

`x x x x x x x x

`We likewise find no grave abuse of discretion on the part of the Comelec in denying petitioner Julius O. Garcia's petition to be proclaimed mayor in view of the disqualification of Renato U. Reyes.

`That the candidate who obtains the second highest number of votes may not be proclaimed winner in case the winning candidate is disqualified is now settled. The doctrinal instability caused by see-sawing rulings has since been removed. In the latest ruling on the question, this Court said:

To simplistically assume that the second placer would have received the other votes would be to substitute our judgment for the mind of the voter. The second placer is just that, a second placer. He lost the elections. He was repudiated by either a majority or plurality of voters. He could not be considered the first among qualified candidates because in a field which excludes the disqualified candidate, the conditions would have substantially changed. We are not prepared to extrapolate the results under the circumstances.

`Garcia's plea that the votes cast for Reyes be invalidated is without merit. The votes cast for Reyes are presumed to have been cast in the belief that Reyes was qualified and for that reason can be treated as stray, void and meaningless. The subsequent finding that he is disqualified cannot retroact to the date of the elections as to invalidate the votes cast for him.'

Consequently, respondent Comelec committed grave abuse of discretion insofar as it failed to follow the above doctrine, a descendant of our ruling in *Labo v. Comelec* (176 SCRA 1 [1989]).

(pp. 782-783)

Thus, the Comelec committed grave abuse of discretion insofar as it failed to follow the above-cited settled ruling consistently applied by this Court since the case of *Labo vs. Comelec* (176 SCRA 1 [1989]), *Aquino vs. Comelec*, 248 SCRA 400 [1995], *Reyes vs. Comelec* (254 SCRA 514 [1996]); and *Nolasco vs. Comelec* (275 SCRA 763 [1997]).

Even as the Court cannot accede to the contention that, in view of the election results pointing to petitioner as the electors' choice for the mayoralty post, we should now close our eyes to the pertinent provisions of the Omnibus Election Code on the matter, nevertheless, the Court duly notes that the said election results point to the fact that private respondent was not then the choice of the people of Santiago City, Isabela. This Court has no authority under any law to impose upon and compel the people of Santiago City to accept private respondent as their mayor. The law on succession under section 44 of Republic Act 7160, otherwise known as the Local Government Code, would then apply. Said provision relevantly states:

SEC. 44. Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice Mayor. -- (a) 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 disability, the second highest ranking sanggunian member, shall become 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.

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.

For purposes of succession as provided in this 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.

WHEREFORE, the petition is hereby partly DENIED, insofar as the Comelec ruling to ANNUL the election and proclamation of petitioner is being AFFIRMED. The petition is, however, hereby GRANTED so as to MODIFY the resolution of the Comelec in SPA No. 98-288 by DELETING the portion directing the city board of canvassers to reconvene and proclaim the winning candidate from among those voted upon during the May 11, 1998 elections. The law on succession should be enforced. Accordingly, the restraining order issued in this case is forthwith LIFTED.

**SO ORDERED.**

Bellosillo, Mendoza, Quisumbing, Purisima, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

Davide, Jr., C.J., on leave.

Romero, and Panganiban, JJ., see dissenting opinion.

Puno, and Vitug, JJ., joins dissenting opinion of J. Romero.

Kapunan, and Pardo, JJ., no part.

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**DISSENTING OPINION**

ROMERO, J.:

As we turn a new leaf in our country's history, we should brace ourselves to meet the challenges that continue to threaten our sovereignty and our enjoyment of the blessings of democracy. It is in this light that the free and unfettered exercise of the right of suffrage, which is the instrument through which the people express their sovereign will, should be defended at all costs. So too, should we strive to give full effect to the true will of the sovereign people as expressed in their ballots.

In view of the above reasons, I beg to differ from the majority position.

For a better understanding of the points I wish to raise in this opinion, a review of the factual milieu is in order:

On March 24, 1998, Jose "Pempe" C. Miranda, then incumbent city mayor of Santiago, Isabela, filed his certificate of candidacy[1] for the same mayoralty post in view of the synchronized elections of May 11, 1998. Among others, Jose "Pempe" C. Miranda declared the following in his certificate of candidacy, viz:

"12. I AM ELIGIBLE for the office I seek to be elected. I will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that I will obey the laws, legal orders and decrees promulgated by the duly constituted authorities of the Republic of the Philippines; and that I impose this obligation upon myself voluntarily, without mental reservation or purpose of evasion. I hereby certify that the facts stated herein are true and correct of my own personal knowledge."

On March 29, 1998, Antonio M. Abaya, private respondent herein, filed a Petition to Deny Due Course to and/or Cancel Certificate of Candidacy[2] docketed as SPA No. 98-019, against Jose "Pempe" C. Miranda, who was then the official candidate of the Laban ng Makabayang Masang Pilipino (LAMMP). Private respondent alleged that Jose "Pempe" C. Miranda made a false material representation[3] in his certificate of candidacy, pointing out that Jose "Pempe" C. Miranda is ineligible for re-election as city mayor of Santiago, Isabela, by virtue of the limitation stated in Section 8, Article X of the 1987 Constitution[4] and in Section 43(b) of Republic Act No. 7160,[5] otherwise known as the Local Government Code of 1991, which prohibits elective local officials from seeking a fourth consecutive term for the same elective post.

In a resolution[6] dated May 5, 1998, the Commission on Elections (COMELEC) First Division[7] resolved to disqualify Jose "Pempe" C. Miranda on the ground that he has already served the maximum three (3) consecutive

terms[8] for the same position, hence rendering him ineligible to run for the same position in the May 11, 1998 elections. The dispositive portion of the May 5, 1998 resolution reads:

"WHEREFORE, in view of the foregoing, the Commission (FIRST DIVISION) GRANTS the Petition. Respondent JOSE "Pepé" MIRANDA is hereby DISQUALIFIED from running for the position of mayor of Santiago City, Isabela, in the May 11, 1998 national and local elections.

SO ORDERED."[9]

Since neither Jose "Pempe" C. Miranda nor private respondent Antonio M. Abaya moved for the reconsideration of the COMELEC Resolution dated May 5, 1998, said resolution became final and executory.[10]

On May 6, 1998, Joel G. Miranda, petitioner herein, filed his certificate of candidacy[11] for the mayoralty post, as a substitute candidate for his father, Jose "Pempe" C. Miranda, who was earlier declared disqualified by the COMELEC. Petitioner's certificate of candidacy was accompanied by a certificate of nomination[12] from the same political party, the LAMMP. The substitution is in accordance with Section 77 of the Omnibus Election Code[13] which provides that a candidate "disqualified for any cause" may be substituted by the same political party to which the disqualified candidate is affiliated. The substitution of Joel G. Miranda was sanctioned by the COMELEC En Banc, as it in fact included petitioner's name in the certified list of candidates for the position of mayor of Santiago City, Isabela.

Meanwhile, on May 11, 1998, elections were held. In Santiago City, Isabela, where only two (2) candidates vied for the mayoralty seat, petitioner garnered 22,002 votes as against private respondent, who obtained 20,336 votes. Thus, petitioner won with a margin of 1,666 votes.

On May 13, 1998, private respondent filed a Petition to Declare Null and Void Substitution with Prayer for Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order.[14] Said petition[15], docketed as SPA No. 98-288, prays for the nullification of petitioner's certificate of candidacy as substitute candidate for being void ab initio on the ground that since the certificate of candidacy of Jose "Pempe" C. Miranda has been cancelled and/or denied due course, there was no certificate of candidacy to be substituted or replaced by the certificate of candidacy of petitioner. Private respondent argues that the substitution of candidacy presupposes the existence, at the time of substitution, of a certificate of candidacy to be replaced or substituted by the substitute certificate of candidacy. Private respondent further avers that the substitution should be nullified since the cancellation of and/or denial of due course to a certificate of candidacy is not one of the grounds for substitution under Section 77 of the Omnibus Election Code.[16]

In an Amended Petition to Declare Null and Void Substitution with Prayer for Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order[17] filed on May 14, 1998, private respondent further argues that the substitution of petitioner was not valid considering that the latter's certificate of candidacy was hastily and prematurely filed. Private respondent asserts that a substitution, when allowed, should take place only after the lapse of the five-day period within which to file a motion for reconsideration.[18] In this case, since the resolution declaring Jose "Pempe" C. Miranda "disqualified" was promulgated on May 5, 1998, then the substitute candidate can file his certificate of candidacy only on May 11, 1998. Private respondent further contends that, even assuming that substitution is allowed, the certificate of nomination, which should accompany petitioner's certificate of candidacy, was not attested under oath by the party president, chairman, secretary-general, or any other party officer duly authorized in writing to do so,[19] in contravention of the requirements of Section 5 of COMELEC Resolution No. 2977,[20] dated January 15, 1998.

In both the original and amended petitions, private respondent prayed that the proclamation of the petitioner as duly elected mayor of Santiago City, Isabela, be enjoined. However, no temporary restraining order or writ of

preliminary injunction was issued by the COMELEC and consequently, the petitioner was proclaimed duly elected city mayor.[21]

On May 16, 1998, the COMELEC First Division dismissed *motu proprio* the Amended Petition to Declare Null and Void Substitution with Prayer for Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order. In its resolution dated May 16, 1998,[22] the COMELEC First Division ruled in this wise:

"I. There was valid substitution.

The petition in SPA No. 98-019 was anchored essentially on the ineligibility of the respondent to run for the fourth (4th) time for the mayorship of Santiago City. In substance, it was a petition to disqualify. Even the Resolution of the Commission (First Division) promulgated on May 5, 1998 and a copy of which was attached to the petition herein is clear that respondent therein was disqualified by this Commission. Said ruling on the DISQUALIFICATION of Jose 'Pempe' Miranda was accepted by herein petitioner, a fact that is conclusive on him, by reason of his failure to appeal said Resolution. Jose 'Pempe' Miranda, being a disqualified candidate may, therefore, be substituted.

II. No premature substitution.

While it may be true that a period of five (5) days to appeal is allowed under the Comelec Rules of Procedure, the option to consider the Resolution final and executory without waiting for the expiration of the period to appeal belongs to the aggrieved party. Thereupon, the winning party has no cause for complaint. An express waiver of the right to appeal by the losing party is not necessary to the validity of his subsequent acts.

It must also be remembered that the respondent Jose Miranda in SPA 98-019 was wearing two hats: one, in his capacity as respondent in said case and two, as District Chairman in the 4th District of Isabela for LAMMP. Personal acts or omissions of respondent cannot vitiate his official acts as District Chairman. The party nomination as well as the Certificate of candidacy of the substituted candidate, both dated May 6, 1998, cannot be made infirm by Jose Miranda's decision to accept the ruling as final within the appeal period.

III. A party nomination signed by the District Chairman of the party concerned is valid.

Petitioner contends that the party nomination issued to herein respondent by the LAMMP Chairman for the Fourth District of Isabela, to which Santiago City belongs, is flawed for two reasons:

- a. The authority in writing for the LAMMP Chairman to nominate is not attached to the nomination;
- b. The Certificate of Nomination is not under oath.

Section 5 of Comelec Resolution No. 2977 relied on by the petitioner does not require that the written authority to nominate granted by the LAMMP to its District Chairman must be attached to the nomination. Hence, the nomination issued by the District Chairman in this case cannot be challenged on that ground."[23] (Underscoring supplied.)

On May 21, 1998, private respondent filed a Motion for Reconsideration[24] of the COMELEC resolution dated May 16, 1998, raising the following errors[25] for consideration, to wit:

"I. The action or remedy instituted by petitioner in SPA No. 98-019 captioned 'Antonio M. Abaya vs. Jose "Pempe" Miranda' was purely a petition to deny due course to and/or cancel the certificate of candidacy of respondent therein pursuant to Section 78 of the Omnibus Election Code and not a petition for disqualification.

II. The certificate of candidacy filed by herein respondent in substitution for the certificate of candidacy filed by his father and which was denied due course and/or canceled in SPA No. 98-019, is fatally defective and void ab initio." (All caps in the original)

On December 8, 1998, the COMELEC En Banc, public respondent herein, issued a resolution[26] resolving jointly the petitions docketed as SPA No. 98-288 and SPA No. 98-019.[27] The Commission En Banc resolved to grant the Motion for Reconsideration in SPA No. 98-288 thereby nullifying the substitution of petitioner as mayoralty candidate. Curiously, the COMELEC En Banc resolution altered and amended the dispositive portion of the resolution dated May 5, 1998 in SPA No. 98-019, which has already become final and executory. It deleted the phrase "Jose 'Pe[m]pe' Miranda is hereby DISQUALIFIED from running for the position of mayor of Santiago City, Isabela, in the May 11, 1998 national and local elections", and in lieu thereof, amended and rectified the dispositive portion thereof to read as:

"WHEREFORE, in view of the foregoing, the Commission (First Division) GRANTS the Petition. Respondent JOSE 'PEMPE' MIRANDA's certificate of candidacy for the position of mayor of Santiago City in the May 11, 1998 national and local elections is hereby DENIED DUE COURSE AND/OR CANCELLED.

SO ORDERED."[28]

The COMELEC En Banc resolution likewise annulled the election and proclamation of the petitioner as mayor of Santiago City, Isabela and cancelled his certificate of canvass and proclamation; and, ordered the proclamation of the private respondent as duly elected mayor of Santiago City, Isabela. The Commission En Banc disposed thus:

"2. ANNUL the election and proclamation of respondent JOEL G. MIRANDA as mayor of Santiago City in the May 11, 1998 election and CANCEL the Certificate of Canvass and Proclamation (C.E. form 25) issued therefor;

3. DIRECT THE City of board of Canvassers of Santiago City to RECONVENE, prepare a new certificate of canvass & proclamation and PROCLAIM the winning candidate those voted upon as the duly elected mayor of Santiago City in the May 11, 1998 election."[29]

The COMELEC En Banc ruled that the resolution dated May 5, 1998 in SPA No. 98-019 did not disqualify petitioner's father, Jose "Pempe" C. Miranda, but that his certificate of candidacy was denied due course and cancelled. Hence, Jose "Pempe" C. Miranda, ceased to be a candidate and thus, cannot be substituted by anybody, petitioner included. The Commission En banc distinguished between Section 78[30] of the Omnibus Election Code in relation to Section 74,[31] whereon SPA No. 98-019 is based, and Section 68[32] of the same Code. The substitution of petitioner being null and void ab initio, he did not become a candidate in the May 11, 1998 elections and therefore, the votes petitioner garnered should be considered stray or invalid and his election and consequent proclamation non-existent. It follows that private respondent was the sole candidate for the office of mayor of Santiago City, and in the absence of any candidate who may have obtained the greater number of votes, the right to be proclaimed is legally vested upon private respondent.[33]

Hence, this special civil action for certiorari[34] under Rules 64 and 65 of the 1997 Rules of Civil Procedure of the COMELEC En Banc resolution promulgated on December 8, 1998, in SPA No. 98-288, which reversed and set aside the earlier resolution dated May 16, 1998 of the COMELEC First Division in SPA No. 98-019, dismissing the petition to declare void the substitution of petitioner as candidate for city mayor of Santiago City, Isabela.

In view of petitioner's assertion that the people of Santiago City, Isabela would suffer great and irreparable injury unless a temporary restraining order is issued, the Court had caused the issuance of a temporary restraining order on December 11, 1998, to take effect immediately and to continue until further orders, upon the filing of the required bond.[35]

From the foregoing factual and procedural antecedents which gave rise to and form part of the circumstances attendant to this petition, the following issues have been aptly formulated by the majority:

- Whether the annulment of the substitution and proclamation of the petitioner was issued without jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction; and
- Whether the order of the COMELEC directing the proclamation of the private respondent was issued with grave abuse of discretion amounting to lack of jurisdiction.[36]

The prevailing principle in this jurisdiction on petitions for certiorari is, only where there is a clear showing of grave abuse of discretion would this Court be warranted in reversing the resolution or decision of the respondent tribunal.

After a thorough and judicious review of the circumstances obtaining in the instant case, it is my considered view that the resolution dated December 8, 1998, of the COMELEC En Banc was issued capriciously, whimsically and in grave abuse of discretion. I, therefore, find for the petitioner.

At the outset, I note the patent and palpable error committed by the public respondent COMELEC En Banc when it *motu proprio* joined the cases in SPA No. 98-019 and SPA No. 98-288, on the tenuous basis of identity of parties and issues involved. The resolution now assailed as having been rendered with grave abuse of discretion was supposed to address only the issues as they were presented in the motion for reconsideration filed by private respondent. The public respondent, instead of confining itself only with the instant case, erroneously included the issues posed in SPA No. 98-019, which issues had long been resolved and had become final and executory.

I am perplexed by the sudden resurrection of the issues in SPA No. 98-019, which have long been laid to rest in the resolution dated May 5, 1998, of the COMELEC First Division. Since no motion for reconsideration was filed by the parties, the resolution became final and executory. It is a rule of long-standing that a judgment which has become final and executory, can no longer be reviewed, amended or corrected by the Court, except for clerical errors or mistakes.[37] This being the case, the public respondent did not acquire jurisdiction over SPA No. 98-019, and accordingly, should not have consolidated or jointly resolved the two cases. What is even more disturbing is the fact that public respondent has caused the amendment of the dispositive portion of the resolution dated May 5, 1998, in the resolution dated December 8, 1998, of the Commission En Banc. This is a blatant and unprecedented deviation from the principle that "once a decision becomes final, even the Court which rendered it cannot lawfully alter or modify the same, especially where the alteration or modification is material and substantial." [38]

While the resolution of the instant petition can be arrived at by confining the discussion to the issues raised in SPA No. 98-288, I shall, nevertheless, explain why the issues in SPA No. 98-019 bear upon the instant petition. This should not, however, mislead one into thinking that this Court can *motu proprio* take cognizance of and acquire jurisdiction over SPA No. 98-019 despite the fact that the resolution therein had never been appealed to the Commission En Banc nor had been subject of a motion for reconsideration; or that this Court can re-open a decided case that has long become final and executory.[39]

The pivotal issue posed in SPA No. 98-019 is: Whether Jose "Pempe" C. Miranda's certificate of candidacy should be denied due course and/or cancelled, by virtue of his having served the maximum legal limit of three (3) consecutive terms for the same position.

The COMELEC First Division found that, indeed, Jose "Pempe" C. Miranda had already served three (3) consecutive terms as mayor of Santiago City, Isabela, and hence, is ineligible to run for the same position in the May 11, 1998 elections. Note that in the decretal portion of the said resolution, the Commission used the word "DISQUALIFIED." It bears stressing that neither of the parties moved for reconsideration, thereby making said resolution final and executory. As a result of the disqualification of Jose "Pempe" C. Miranda as official mayoralty candidate of the LAMMP, the party was constrained to field herein petitioner as substitute candidate.

Elections were held, and substitute candidate Joel G. Miranda, petitioner herein, obtained the highest number of votes. It appears that, only after the canvassing of votes showing petitioner in the lead did private respondent, too late in the day, questioned the resolution dated May 5, 1998, through a petition to declare null and void the substitution of petitioner as official mayoralty candidate of the LAMMP. It should be pointed out that from the time petitioner filed his certificate of candidacy up until the counting of ballots and canvassing of votes, private respondent did nothing to impugn the validity of petitioner's substitution and his certificate of candidacy.

In seeking to nullify petitioner's certificate of candidacy as substitute candidate for being void ab initio, private respondent asserts that since his petition was denominated as a "Petition to Deny Due Course to and/or Cancel Certificate of Candidacy," the COMELEC First Division, in resolving to grant said petition, actually denied due course to and/or cancelled the certificate of candidacy filed by Jose "Pempe" C. Miranda.

The COMELEC En Banc upheld private respondent's contention and criticized its First Division for having unwittingly committed a serious error in semantics by using the term "DISQUALIFIED", instead of the more appropriate word "CANCELLED."<sup>[40]</sup> It ruled that the erroneous word, notwithstanding, the certificate of candidacy of Jose "Pempe" C. Miranda was deemed cancelled and/or denied due course, and thus, there was no certificate of candidacy to be substituted or replaced by the certificate of candidacy of petitioner.<sup>[41]</sup> The Commission En Banc deduced that since the cancellation of and/or denial of due course to a certificate of candidacy is not one of the grounds for substitution under Section 77 of the Omnibus Election Code, the substitution of petitioner is null and void ab initio.<sup>[42]</sup> Further, the Commission En Banc inferred that since petitioner never acquired the status and personality of a registered candidate, private respondent became the sole candidate for the mayoralty post<sup>[43]</sup> in Santiago City, Isabela. Therefore, when there is a showing that private respondent obtained the requisite majority vote, he should be proclaimed as duly elected mayor of Santiago City, Isabela.

Turning now to the nexus or vinculum of SPA No. 98-019 to the instant case, I have here occasion to discuss the disqualification of Jose "Pempe" C. Miranda and the substitution of Joel G. Miranda as mayoralty aspirant.

I am in total conformity with the choice of remedy of private respondent in challenging the "eligibility" of Jose "Pempe" C. Miranda. For when a material representation required by law to be stated in a certificate of candidacy is false, the eligibility of the candidate concerned may be impugned only through a petition to deny due course to or cancel certificate of candidacy.<sup>[44]</sup> Section 78 of the Omnibus Election Code, in relation to Section 74<sup>[45]</sup> of the same Code, operates to deny due course and/or to cancel certificates of candidacy that contain material representations that are false.

In his certificate of candidacy, Jose "Pempe" C. Miranda falsely represented himself to be "eligible" for the office of mayor of Santiago City, Isabela, when in fact, he had already served the maximum legal limit of three (3) consecutive terms for the same position. The ineligibility or disqualification of Jose "Pempe" C. Miranda from seeking a fourth consecutive term finds justification in statutory<sup>[46]</sup> and constitutional<sup>[47]</sup> law. But because he made a material representation in his certificate of candidacy that is false, in violation of Section 74 of the Omnibus Election Code, the proper recourse against the candidate is via a petition to deny due course to or cancel a certificate of candidacy under Section 78 of the same Code. This is not to say, however, that the ineligibility of Jose "Pempe" C. Miranda merely or solely stems from his false statement in his certificate of candidacy, such that, if he omits said representation or, if he admits his ineligibility to seek the public office, then he can run and be voted for in the May 11, 1998 elections. For even absent the false material representation referred to in Section 78 in relation to Section 74 of the Omnibus Election Code, Jose "Pempe" C. Miranda is disqualified or ineligible to seek another consecutive term for the same office ipso jure.

Stated differently, even if the petition filed by private respondent was denominated as a "Petition to Deny Due Course to and/or Cancel Certificate of Candidacy," the fact remains that Jose "Pempe" C. Miranda, in view of the term limits fixed under Section 8, Article X of the Constitution and Section 43(b) of the Local Government Code, is DISQUALIFIED to seek the mayoralty post a fourth time.

In fine, even if the petition was filed pursuant to Section 78, in relation to Section 74 of the Omnibus Election Code, the COMELEC First Division correctly found Jose "Pempe" C. Miranda to be "DISQUALIFIED," since the false material representation is essentially based on his disqualification under relevant statutory and constitutional provisions.

Indeed, the assertion of private respondent that there is a world of difference between "disqualified" and "denied due course and/or canceled" for purposes of substitution, is untenable. The hair-splitting distinction which private respondent arduously explained, and to which the majority subscribes, cannot, by any stretch of legal hermeneutics, be construed as sanctioning a conclusion that a petition to deny due course to and/or cancel a certificate of candidacy, when granted, excludes a finding that the candidate concerned is disqualified by virtue of his ineligibility as prescribed under statutory and constitutional law.

The disqualification of Jose "Pempe" C. Miranda having been established, I now proceed to determine the validity of the substitution of Joel G. Miranda.

Private respondent, as sustained by the Commission En Banc, makes capital of the argument that "the substitute certificate of candidacy filed by petitioner to replace the cancelled certificate of candidacy of his father Jose "Pempe" C. Miranda, is fatally defective for lack of legal basis, and as such, the same is necessarily void ab initio and petitioner who filed the same is not, in law, a candidate." [48]

When, as in the instant case, an official mayoralty aspirant of a political party has been declared "disqualified for any reason" to seek said public office, Section 77 of the Omnibus Election Code operates to authorize a substitute to file a certificate of candidacy, to replace the candidate who was disqualified. Section 77 of the Omnibus Election Code provides that "x x x 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."

The term "SUBSTITUTION" ordinarily means "replacement", or "turning to an alternative." Applying the evident intention of the law, as literally expressed in Section 77 of the Omnibus Election Code, that which is sought to be replaced is not the certificate of candidacy previously filed, but to replace the candidate who died, withdrew or was disqualified. The provision on substitution outlined under Section 77 of the Omnibus Election Code, enables the registered or accredited political party to field a substitute candidate to replace the candidate who died, withdrew or was disqualified. Private respondent's assertion that "it is the certificate of candidacy which is to be substituted or replaced by the substitute certificate of candidacy of herein petitioner," [49] is grossly inaccurate and logically flawed. What is crystal clear from a reading of Section 77 of the Omnibus Election Code, is that it authorizes a person (petitioner) belonging to and nominated by the same political party (LAMMP) to replace the candidate who was disqualified (Jose "Pempe" C. Miranda). In the instant case, petitioner, who has filed the requisite certificate of candidacy and certificate of nomination, is found to have validly substituted or replaced Jose "Pempe" C. Miranda as official mayoralty aspirant of the LAMMP in the May 11, 1998 elections, in Santiago City, Isabela.

Private respondent, in challenging the validity of the substitution of petitioner, alleges that petitioner's certificate of candidacy was hastily and prematurely filed. Private respondent further contends that, there could not have been a valid substitution since the certificate of nomination, which should accompany petitioner's certificate of candidacy, was not attested under oath by the party president, chairman, secretary-general, or any other party

officer duly authorized in writing to do so, in contravention of the requirements of Section 5 of COMELEC Resolution No. 2977.

With respect to the contention that the substitution of petitioner was done in haste and that his certificate of candidacy was prematurely filed, I invite attention to the fact that the resolution declaring Jose "Pempe" C. Miranda "disqualified" was promulgated on May 5, 1998. If we were to follow the five-day reglementary period before a substitute candidate can file his certificate of candidacy, then petitioner can only file his certificate of candidacy on May 11, 1998. Considering that the purpose of filing a certificate of candidacy is to apprise the voting public of one's candidacy for a particular elective post, the petitioner and his party cannot certainly be faulted for filing the substitute certificate of candidacy immediately after the disqualification or before May 11, 1998. Since the resolution was promulgated only on May 5, 1998, to strictly enforce the five-day reglementary period on petitioner, as to permit him to file his certificate of candidacy only on May 11, 1998, election day, would be to effectively deprive him of the opportunity to make known publicly his candidacy for the mayoralty post of Santiago City, Isabela.

With respect to the allegation that the petitioner's certificate of candidacy is fatally defective owing to the failure of the certificate of nomination to bear an attestation under oath of the party president, chairman, secretary-general, or any other party officer duly authorized in writing to do so, it is my well-considered view that the absence of an attestation under oath in the certificate of nomination, does not render said certificate invalid. It is a rule of long-standing that departure from the formal requirements<sup>[50]</sup> prescribed under the election laws, when not used as a means for fraudulent practice, will be considered a harmless irregularity.<sup>[51]</sup> This irregularity, cannot invalidate the certificate nor the election itself for the fundamental reason that, after the people have expressed their sovereign choice, it being proven that petitioner Joel G. Miranda obtained the majority of the legal votes, the will of the people cannot be frustrated by a mere technicality.<sup>[52]</sup> It is judicially accepted that election rules, while mandatory before the election, are merely directory after such election and it is not just to nullify the will of the electorate by purely technical reasons.<sup>[53]</sup> In a long line of cases, this Court ruled that laws governing election cases must be liberally construed, and that technical and procedural barriers should not be allowed to stand if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials.<sup>[54]</sup>

Finally, I cannot agree with public respondent's ruling that private respondent should be proclaimed as the winning candidate among those voted upon as the duly elected Mayor of Santiago City in the May 11, 1998 elections.

As records prove, petitioner Joel G. Miranda obtained the highest number of votes, leading by 1,666 votes over private respondent.<sup>[55]</sup> Having been chosen and elected by the majority of the voting populace of Santiago City, Isabela, petitioner is legally entitled to serve in the capacity of city mayor.

Even on the assumption that Jose "Pempe" C. Miranda was declared disqualified, private respondent, being the candidate who obtained the second highest number of votes, cannot occupy the office that was vacated as a result of the disqualification of petitioner, who obtained the highest number of votes.<sup>[56]</sup> By any mathematical formulation, the runner-up cannot be construed to have obtained a majority or plurality of votes cast where an ineligible candidate has garnered either a majority or plurality of the votes.<sup>[57]</sup> To simplistically assume that the second placer would have received the other votes would be to substitute our judgment for the mind of the voter. The second placer is just that, a second placer.<sup>[58]</sup> This is not to say that he is bereft of any other recourse.

In view of the foregoing, it is my opinion that the Court should GRANT the instant petition for certiorari and REVERSE and SET ASIDE the resolution of public respondent COMELEC En Banc dated December 8, 1998 for

having been rendered with grave abuse of discretion amounting to lack or excess of jurisdiction, as well as to REINSTATE the resolution of the COMELEC First Division dated May 16, 1998.

[1] Rollo, p. 34.

[2] Entitled "Antonio M. Abaya v. Jose `Pempe' Miranda," Rollo, pp. 26-33.

[3] Sec. 78, Omnibus Election Code of the Philippines, provides:

"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 (25) days from the time of filing of the certificate of candidacy and shall be decided, after notice and hearing, not later than fifteen days before the election." (Emphasis ours)

[4] "Sec. 8. The term of office of elective local officials which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. x x x" (Emphasis supplied).

[5] "Sec. 43. Term of Office.

x x x x x x x x

b) No local elective official shall serve for more than three (3) consecutive terms in the same position. x x x." (Emphasis supplied)

[6] Petition, Annex B, Rollo, pp. 36-43.

[7] Composed of Hon. Manolo B. Gorospe, presiding commissioner; Hon. Teresita Dy-Liacco Flores and Hon. Evalyn I. Fetalino, commissioners.

[8] His first term was by virtue of his election on January 18, 1988; his second, by his re-election on May 11, 1992; and his third, also by re-election on May 8, 1995.

[9] Supra, note 6, p. 43.

[10] Section 13 (c), Rule 18 of the COMELEC Rules of Procedure provides:

(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.

[11] Petition, Annex C, Rollo, p. 44.

[12] Petition, Annex C-1, Rollo, p. 45.

[13] "Sec. 77. Candidates in case of death, DISQUALIFICATION or withdrawal of another. - If after the last day for filing of certificate 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." (Underscoring supplied)

[14] Petition, Annex D, Rollo, pp. 46-50.

[15] Entitled "Antonio M. Abaya v. Joel G. Miranda".

[16] Supra, note 14, p. 47.

[17] Petition, Annex D-1, Rollo, pp. 51-56.

[18] Ibid., p. 53.

[19] Id.

[20] "Sec. 5. Certificate of nomination of official candidates by political party, and nomination of party list representatives. - The certificates of nomination by registered political parties, organizations or coalitions of their official candidates shall be filed with the certificates of candidacy not later than the last day for filing of certificates of candidacy as specified in Section 4 hereof, duly signed and attested under oath by the party president, chairman, secretary-general or any other party officer duly authorized in writing to do so. x x x" (Underscoring ours)

[21] Rollo, p. 11.

[22] Petition, Annex E, Rollo, pp. 57-61.

[23] Ibid., p. 59.

[24] Petition, Annex F, Rollo, pp. 62-72. Petitioner Miranda was not furnished a copy of the Motion for Reconsideration.

[25] Ibid., pp. 2 and 7.

[26] Petition, Annex H, Rollo, pp. 85-92.

[27] Ibid., p. 85.

[28] Id., p. 90.

[29] Id., p. 91.

[30] Petition to deny due course to or cancel a certificate of candidacy.

[31] Contents of certificate of candidacy.

[32] Disqualifications.

[33] Supra, note 26, pp. 89-90.

[34] Rollo, pp. 3-25.

[35] Rollo, pp. 105-106.

[36] Rollo, pp. 15 and 18.

[37] *Maramba v. Lozano*, 20 SCRA 474 (1967).

[38] *Samson v. Montejo*, 9 SCRA 419 (1963).

[39] Petition, Annex H-1, Rollo, pp. 93-99.

[40] Supra, note 26, pp. 85-86.

[41] Ibid., p. 86.

[42] Id., p. 89.

[43]Id., p. 90.

[44]Section 1, Rule 23, COMELEC Rules of Procedure.

[45]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. (*Italics supplied*)

[46] Section 43(b), Republic Act No. 7160, otherwise known as the 1991 Local Government Code.

[47] Section 8, Article X, 1987 Philippine Constitution.

[48] *Supra*, note 24, p. 68.

[49]*Supra*, note 17, p. 52.

[50] *Gardiner v. Romulo*, 26 SCRA 521 (1914).

[51] *Alialy v. COMELEC*, 2 SCRA 957 (1961).

[52] *De Guzman v. Board of Canvassers of La Union and Lucero*, 48 Phil. 211 (1925).

[53] *Gundan v. CFI*, 66 Phil. 125 (1938); *Macasundig v. Macalangan*, 13 SCRA 577 (1965); *Lambonao v. Tero*, 15 SCRA 716 (1965); *Juliano v. CA*, 20 SCRA 808 (1967); *Maliwanag v. Herrera*, 25 SCRA 175 (1968).

[54] *Ginete v. Arcangel*, 21 SCRA 1178 (1967); *Vda. de De Mesa v. Mencias*, 18 SCRA 533 (1966); *De Castro v. Ginete*, 27 SCRA 623 (1969).

[55] Petitioner garnered 22,002 votes while private respondent received 20,336 votes. Petitioner won with a margin of 1,666 votes.

[56] *Labo, Jr. v. COMELEC*, 176 SCRA 1 (1989), 211 SCRA 297 (1992); *Abella v. COMELEC*, 201 SCRA 253 (1991).

[57] *Aquino v. COMELEC*, 248 SCRA 400 (1995).

[58] *Reyes v. COMELEC*, 254 SCRA 514 (1996). But see *Grego v. COMELEC*, 274 SCRA 481 (1997).

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## DISSENTING OPINION

### PANGANIBAN, J.:

I appreciate the scholarly disquisition of the majority led by my distinguished brother, Justice Jose A. R. Melo, explaining the difference between the "disqualification" of a candidate and the "cancellation" of his certificate of candidacy. The majority holds that, under Section 77 of the Omnibus Election Code, there are only three instances in which a candidate may be "substituted," and these are "death, withdrawal or disqualification" of such candidate.

Inasmuch as the certificate of candidacy of petitioner's father, Jose "Pempe" Miranda, was merely "cancelled," he could not be legally substituted by reason of the rule on statutory construction, *expressio unius est exclusio alterius*.<sup>[1]</sup>

I agree that there is some legal logic in this conclusion. However, as the eminent Justice Oliver Wendell Holmes Jr. has aptly said, "The life of the law has not been logic; it has been experience." With due respect, may I point out that the problem with the majority's position is that it totally scuttles the result of the election for the position of mayor and, instead, unceremoniously installs the elected vice mayor to the said position.

There is no doubt that the petitioner was the people's choice for mayor. He garnered the highest number of votes in the election for mayor of the City of Santiago. Why should this Court, in the name of hair-splitting logic, obliterate the popular will and impose upon the electorate a person whom nobody voted for the position of mayor? Experience and common sense rebel against this proposition.

To start with, by virtue of the Comelec Resolution of May 5, 1998, petitioner's father was "DISQUALIFIED from running for the position of mayor of Santiago City, Isabela."<sup>[2]</sup> However, Mr. Justice Melo contends that he was not really disqualified; rather, the Comelec "GRANTED" the petition of private respondent who had prayed for the cancellation of Jose "Pempe" Miranda's certificate of candidacy.

I can concede that the Comelec Resolution is less than perfect; in fact, it may even be termed as confusing or contradictory. I submit, however, that such confusion should not be used to thwart the will of the electorate. I believe that in every action involving the possibility of a reversal of the popular electoral choice, this Court must exert utmost effort to resolve the issues in a manner that would give effect to the will of the people, for it is but sound public policy to cause electoral offices to be filled by the choice of the electorate. We must liberally construe election laws and jurisprudence to give fullest effect to the manifest will of our people and to give life and meaning to their mandate.<sup>[3]</sup> In every election, the people's choice is the paramount consideration and their expressed will must, in every way possible, be given effect.<sup>[4]</sup>

In the recent case *Loong v. Comelec*,<sup>[5]</sup> the Court strongly exhorted once more that the will of the people should not be "kick[ed] away xxx by giving a literal interpretation to [the law]."<sup>[6]</sup> "When the sovereignty of the people is at stake, it is not enough for this Court to make a statement but it should do everything to have that sovereignty obeyed by all."<sup>[7]</sup>

To buttress my Dissent, I hereby quote our en banc Decision in *Frivaldo v. Comelec*:<sup>[8]</sup>

"At balance, the question really boils down to a choice of philosophy and perception of how to interpret and apply laws relating to elections: Literal or liberal; the letter or the spirit; the naked provision or its ultimate purpose; legal syllogism or substantial justice; in isolation or in the context of social conditions; harshly against or gently in favor of the voters' obvious choice. In applying election laws, it would be far better to err in favor of popular sovereignty than to be right in complex but little understood legalisms." [Emphasis supplied.]

Indeed, to inflict upon the electorate of Santiago City a person (the vice mayor) whom they never voted for the position of mayor constitutes, in my humble opinion, an unwarranted imposition on the people and unacceptable assault to the judicial conscience.

WHEREFORE, I vote to GRANT the Petition.

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[1] "The express mention of the things included excludes those not included." German G. Lee Jr., *Handbook of Legal Maxims*, 2nd revised ed. (1998), p. 183.

[2] The dispositive portion of the Resolution reads:

"WHEREFORE, in view of the foregoing, the Commission (FIRST DIVISION) GRANTS the Petition. Respondent JOSE `Pe[m]pe MIRANDA is hereby DISQUALIFIED from running for the position of mayor of Santiago City, Isabela, in the May 11, 1998 national and local elections."

[3] See *Mentang v. Comelec*, 229 SCRA 666, February 4, 1994; *Pabilan v. Tabalba*, 230 SCRA 205, February 21, 1994; *Aruelo Jr. v. Court of Appeals*, 227 SCRA 311, October 20, 1993; *Tatlonghari v. Comelec*, 199 SCRA 849, July 31, 1991; *Unda v. Comelec*, 190 SCRA 827, October 18, 1990.

[4] *Benito v. Comelec*, 235 SCRA 436, August 17, 1994.

[5] GR No. 133676, April 14, 1999, per Puno, J.

[6] At p. 32. While I agree in principle with this doctrine, I believe that the Court misapplied it in *Loong* because, as I explained in my Dissenting Opinion therein, the election results of the manual count were not reflective of the automated count, which the law mandated.

[7] At p. 36.

[8] 257 SCRA 727, 769, June 28, 1996, per Panganiban, J.

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