

REP. MA. CATALINA L. GO, PETITIONER, VS. COMMISSION ON ELECTIONS, FELIPE V. MONTEJO AND ARVIN V. ANTONI, RESPONDENTS.

G.R. No. 147741. May 10, 2001

Ponente: PARDO, J.

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PARDO, J.:

The Case

In her petition for certiorari,[1] petitioner seeks to nullify the resolution of the Commission on Elections (COMELEC) en banc declaring her disqualified to run for the office of governor of Leyte and mayor of Baybay, Leyte, because she filed certificates of candidacy for both positions and the withdrawal of her certificate of candidacy for mayor was filed late by twenty eight minutes from the deadline.

Forthwith, we issued an order[2] to maintain the status quo ante, in effect allowing petitioner's certificate of candidacy for governor in the meantime.

In its Comment,[3] the COMELEC justified its resolution on the ground that petitioner's affidavit of withdrawal of her certificate of candidacy for mayor of Baybay, Leyte was ineffectual because it was submitted twenty eight (28) minutes late at the office of the municipal election officer at Baybay. The facsimile copy thereof was filed with said office at 12:28 a.m., 1 March 2001, and the original copy thereof was actually received by the office of the municipal election officer of Baybay at 1:15 p.m., the same day. The provincial election supervisor of Leyte, with office at Tacloban City, to whom petitioner filed her certificate of candidacy for governor at 11:47 p.m., 28 February 2001, refused to accept the affidavit of withdrawal tendered simultaneously therewith because, as he claimed, the affidavit must be filed with the office of the municipal election officer of Baybay, Leyte where petitioner filed her certificate of candidacy for mayor.

The Facts

Petitioner is the incumbent representative of the Fifth District, province of Leyte, whose term of office will expire at noon on 30 June 2001.

On 27 February 2001, petitioner filed with the municipal election officer of the municipality of Baybay, Leyte, a certificate of candidacy for mayor of Baybay, Leyte.

On 28 February 2001, at 11:47 p.m., petitioner filed with the provincial election supervisor of Leyte, with office at Tacloban City, another certificate of candidacy for governor of the province of Leyte. Simultaneously therewith, she attempted to file with the provincial election supervisor an affidavit of withdrawal of her candidacy for mayor of the municipality of Baybay, Leyte. However, the provincial election supervisor of Leyte refused to accept the affidavit of withdrawal and suggested that, pursuant to a COMELEC resolution, she should file it with the municipal election officer of Baybay, Leyte where she filed her certificate of candidacy for mayor.

At that late hour, with only minutes left to midnight, the deadline for filing certificates of candidacy or withdrawal thereof, and considering that the travel time from Tacloban to Baybay was two (2) hours, petitioner decided to send her affidavit of withdrawal by fax[4] to her father at Baybay, Leyte and the latter submitted the same to the office of the election officer of Baybay, Leyte at 12:28 a.m., 01 March 2001.[5] On the same day, at 1:15 p.m., the election officer of Baybay, Leyte, received the original of the affidavit of withdrawal.[6]

On 05 March 2001, respondent Montejo filed with the provincial election supervisor of Leyte, at Tacloban City a petition to deny due course and/or to cancel the certificates of candidacy of petitioner.[7] Respondent Antoni filed a similar petition to disqualify petitioner.[8] The petitions were based on the ground that petitioner filed certificates of candidacy for two positions, namely, that for mayor of Baybay, Leyte, and that for governor of Leyte, thus, making her ineligible for both.

On 06 March 2001, Atty. Manuel L. Villegas, the provincial election supervisor of Leyte, by 1st indorsement, referred the cases to the Commission on Election, Manila, Law Department, on the ground that he was inhibiting himself due to his prior action of refusing to receive the petitioner's affidavit of withdrawal tendered simultaneously with the filing of the certificate of candidacy for governor on 28 February 2001.[9]

In the meantime, the Law Department, COMELEC, under Director Jose P. Balbuena, made a study of the cases without affording petitioner an opportunity to be heard or to submit responsive pleadings. On 05 April 2001, they submitted a report and recommendation to the COMELEC en banc.[10]

The report and recommendation reads:

"Submitted for due consideration is the petition filed by Atty. Felipe V. Montejo and Atty. Arvin V. Antoni on March 5, 2001, before the Office of the Provincial Election Supervisor of Leyte, seeking to deny due course and/or to cancel the certificate of candidacy of Catalina L. Go for Governor of Leyte.

"Both petitions which are exactly worded in the same language allege, as follows:

"This petition is heretofore filed pursuant to the provisions of Rule 23 of the COMELEC RULES OF PROCEDURE and Section 15, as well, of RESOLUTION NO. 3253-A of the COMELEC EN BANC promulgated on November 20, 2000. Ditto, this petition is filed within the reglementary period following the last day for the filing of certificates of candidacy on February 28, 2001.

"Petitioner Atty. Felipe V. Montejo is of voting age, Filipino, Lawyer by profession, married, and a resident of #50 Juan Luna Street, Tacloban City, of which locality he is a registered voter.

"Respondent re. Catalina L. Go, on the other hand is likewise of legal age, married, resident of Baybay, Leyte, of which locality she is a registered voter, and the incumbent Member of the House of Representatives representing the 5th Congressional District of Leyte.

"Respondent CATALINA L. GO filed a certificate of candidacy for the office of Mayor of the Municipality of Baybay, Leyte on February 27, 2001. Without cancelling or withdrawing the said certificate of candidacy this time for the office of Provincial Governor of Leyte on February 28, 2001. However, before the expiration of the period for the filing of certificates of candidacy, respondent indubitably failed to declare under oath the office for which she desires to be eligible and cancel the certificate of candidacy for the other office.

"Verily, at the time respondent filed her certificate of candidacy for Provincial Governor, she knew fully well that she was ineligible for the said office, having filed, a day earlier, a certificate of candidacy for Mayor of Baybay, Leyte. Hence, respondent falsely represented in her certificate of candidacy for Provincial Governor, and under oath, that she is ELIGIBLE for the said office; a material fact required by law to be sworn to and contained in certificates of candidacy. In fine, respondent likewise falsely represented in her certificates of candidacy, under oath, that she will OBEY THE LAWS, ORDERS, DECREES, RESOLUTIONS AND

REGULATIONS PROMULGATED AND ISSUED BY THE DULY CONSTITUTED AUTHORITIES; a material fact required by law to be sworn to and contained in certificates of candidacy.'

"Petitioners' ground to deny due course and/or to cancel the said certificate of candidacy is anchored on Section 73 of the Omnibus Election Code, quoted hereunder.

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

'No person shall be eligible for more than one office to be filled in the same election, and if he files his certificate of candidacy for more than one office, he shall not be eligible for any of them. However, before the expiration of the period for the filing of certificates of candidacy, the person who has filed more than one certificate of candidacy may declare under oath the office for which he desires to be eligible and cancel the certificate of candidacy for the other office or offices.'

"In relation to Section (1) (b) of the Comelec Resolution No. 3253-A, to wit:

'SECTION 1. Certificate of Candidacy. x x x x (b) No person shall be eligible for more than one office to be filled in the same election. If he files a certificate of candidacy for more than one office he shall not be eligible for either. However, before the expiration of the period for the filing of certificate of candidacy, he may declare under oath the office for which he desire to be eligible and cancel the certificate of candidacy for the office or offices.'

"Moreover, petitioners contended that CATALINA LOPEZ LORETO-GO is ineligible to run for either Mayor of Baybay, Leyte or Governor of Leyte Province.

"Based on the certified list of candidate for the provincial candidates of Leyte on March 7, 2001, the certificate of candidacy of Catalina Lopez Loreto-Go for the position of Governor of Leyte was filed with the Office of the Provincial Election Supervisor on February 28, 2001 at 11:47 p.m. the last day for filing certificates of candidacy.

"In support of the petitions of Atty. Montejo and Atty. Antoni, is a certified machine copy of the affidavit of withdrawal of Catalina L. Loreto-Go, which was filed on March 01, 2001 at the Office of the Election Officer of Baybay, Leyte, which she filed on February 28, 2001.

"The affidavit of withdrawal of Catalina Loreto-Go, a portion of which reads:

"1. That last February 27, 2001 I filed my certificate of candidacy for Mayor for the MUNICIPALITY OF BAYBAY, LEYTE;

"2. That due to political exigency and influence from my political leaders urging me to run for Mayor of the Municipality of Baybay, Leyte, I have no other recourse but to follow desire of my political constituents;

"3. That therefore, I am formally withdrawing my certificate of candidacy for Mayor of the Municipality of Baybay, Leyte and in it stead I am formally filing my certificate for Governor of Leyte.

"A careful scrutiny and examination of Catalina Loreto-Go certificate of candidacy for Governor of Leyte Province, although filed on the last day of February 28, 2001, her affidavit of withdrawal for Mayor of Baybay, Leyte, was filed only on March 1, 2001 or one (1) day after the February 28, 2001 deadline. In other word, there are two (2) certificates of candidacy filed by Catalina Loreto-Go, one for governor of Leyte and the other for Mayor of Baybay, Leyte.

"Clearly, on March 1, 2001 when she filed her affidavit of withdrawal for Mayor of Baybay, Leyte, both her certificates of candidacy for Mayor of Baybay, Leyte and Governor of Leyte were still subsisting and effective making her liable for filing two certificates of candidacy on different elective positions, thus, rendering her

ineligible for both positions, in accordance with Section (1) (b) of Comelec Resolution No. 3253-A.

"PREMISES CONSIDERED, the Law Department RECOMMENDS as follows:

"1.) To give due course to the petition of Atty. Felipe V. Montejo and Atty. Arvin V. Antonio against the certificates of candidacy of Catalina Loreto-Go for Governor of Leyte; and

"2.) To direct the Provincial Election Supervisor of Leyte and the Election Officer to delete/cancel the name of CATALINA LOPEZ LORETO-GO from the certified list of candidates for Governor of Leyte and Mayoralty candidates of Baybay, Leyte, and to accordingly notify the parties and the above-named Comelec Officials." [11]

On 23 April 2001, the COMELEC en banc approved the recommendation of the Director, Law Department and adopted the resolution in question as set out in the opening paragraph of this decision. [12]

Hence, this petition. [13]

The Issues

At the oral argument on 07 May 2001, at 3:00 p.m., we defined the following issues to be addressed by the parties:

I.

Is petitioner disqualified to be candidate for governor of Leyte and mayor of Baybay, Leyte because she filed certificates of candidacy for both positions?

II.

Was there a valid withdrawal of the certificate of candidacy for municipal mayor of Baybay, Leyte?

(a) Must the affidavit of withdrawal be filed with the election officer of the place where the certificate of candidacy was filed?

(b) May the affidavit of withdrawal be validly filed by fax?

II.

Was there denial to petitioner of procedural due process of law?

The Court's Ruling

We grant the petition. We annul the COMELEC resolution declaring petitioner disqualified for both positions of governor of Leyte and mayor of the municipality of Baybay, Leyte. The filing of the affidavit of withdrawal with the election officer of Baybay, Leyte, at 12:28 a.m., 1 March 2001 was a substantial compliance with the requirement of the law. [14]

We hold that petitioner's withdrawal of her certificate of candidacy for mayor of Baybay, Leyte was effective for all legal purposes, and left in full force her certificate of candidacy for governor. [15]

Section 73, Batas Pambansa Blg. 881, otherwise known as the Omnibus Election Code, provides that:

"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.

"A person who has filed a certificate of candidacy may, prior to the election, withdraw the same by submitting to the office concerned a written declaration under oath.

"No person shall be eligible for more than one office to be filled in the same election, and if he files his certificate of candidacy for more than one office, he shall not be eligible for any of them. However, before the expiration of the period for the filing of certificates of candidacy, the person who has filed more than one certificate of candidacy may declare under oath the office for which he desires to be eligible and cancel the certificate of candidacy for the other office or offices."

There is nothing in this Section which mandates that the affidavit of withdrawal must be filed with the same office where the certificate of candidacy to be withdrawn was filed. Thus, it can be filed directly with the main office of the COMELEC, the office of the regional election director concerned, the office of the provincial election supervisor of the province to which the municipality involved belongs, or the office of the municipal election officer of the said municipality.

While it may be true that Section 12 of COMELEC Resolution No. 3253-A, adopted on 20 November 2000, requires that the withdrawal be filed before the election officer of the place where the certificate of candidacy was filed,[16] such requirement is merely directory, and is intended for convenience. It is not mandatory or jurisdictional. An administrative resolution can not contradict, much less amend or repeal a law, or supply a deficiency in the law.[17] Hence, the filing of petitioner's affidavit of withdrawal of candidacy for mayor of Baybay with the provincial election supervisor of Leyte sufficed to effectively withdraw such candidacy. The COMELEC thus acted with grave abuse of discretion when it declared petitioner ineligible for both positions for which she filed certificates of candidacy.

There is another important moiety that affects the validity of the COMELEC resolution canceling petitioner's certificates of candidacy. It is that petitioner was deprived of procedural due process of law.[18] The petition to cancel her certificate of candidacy or to deny due course to both were filed before the provincial election supervisor of Leyte who inhibited himself and referred the cases to the Law Department, COMELEC, Manila. On 11 April 2001, the COMELEC, First Division, acting on the first indorsement of Atty. Villegas approved his inhibition and required the provincial election supervisor of Leyte to immediately forward his copy of the records of these cases to the Regional Election Director, Region 08, at Tacloban, Leyte, for hearing.[19] On 18 April 2001, Regional Election Director, Region 08, Atty. Adolfo A. Ibañez issued summons/subpoena to petitioner Go to submit her consolidated answer to the petitions and counter affidavits including position paper within three (3) days from notice.[20] On 23 April 2001, petitioner submitted her consolidated position paper.[21] On 25 April 2001, at 9:00 a.m., Director Ibañez set the cases for hearing for reception of evidence of the parties.

In the meantime, however, the Law Department, COMELEC conducted an ex-parte study of the cases. It did not give petitioner an opportunity to be heard. Petitioner was not required to submit a comment or opposition to the petitions for cancellation of her certificates of candidacy and/or for disqualification. It did not set the cases for hearing. It was not even aware of the proceedings before Director Ibanez in Tacloban. After an ex-parte study of the cases, on 05 April 2001, the Law Department submitted its report and recommendation, approved by Director Balbuena, to the COMELEC en banc.

During the oral argument on 07 May 2001, Director Balbuena candidly admitted that the COMELEC Rules of Procedure requires that notice be given to the respondent. Indeed, Section 3, Rule 23 of said Rules on petition to deny due course to or cancel certificates of candidacy explicitly provides:

"Rule 23 - Petition to Deny Due Course to or Cancel Certificates of Candidacy

"x x x x

"Sec. 3. Summary Proceeding. - The petition shall be heard summarily after due notice. (italic supplied)

Obviously, the COMELEC en banc in approving the report and recommendation of the Law Department, deprived the petitioner of procedural due process of law.[22] The COMELEC, acting as a quasi-judicial tribunal, cannot ignore the requirements of procedural due process in resolving cases before it.[23]

WHEREFORE, the Court GRANTS the petition. The Court ANNULS COMELEC Resolution No. 3982, adopted on 23 April 2001, and DECLARES valid petitioner's certificate of candidacy for Governor of Leyte. The Chairman, Commission on Elections, Manila, and the provincial election supervisor of Leyte shall immediately order the inclusion of petitioner's name in the certified list of candidates for Governor, province of Leyte, to be posted in each polling place/voting booth in every precinct throughout the province of Leyte, in the voters information sheet to be given to each registered voter therein, in the election returns, statement of votes by precincts, and certificate of canvass, and all other election papers.

The status quo ante order heretofore issued is made permanent.

This decision is immediately executory. No motion for reconsideration shall be entertained.

No costs.

SO ORDERED.

Bellosillo, Melo, Puno, Vitug, Kapunan, Panganiban, Gonzaga-Reyes, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

Davide, Jr., C.J., and Mendoza, J., in the result.

Quisumbing, and Buena, JJ., on leave.

Ynares-Santiago, J., abroad on official time.

[1] Filed on 27 April 2001, Rollo, pp. 3-18, under Rule 64 in relation to Rule 65, 1997 Rules of Civil Procedure, as amended.

[2] Issued on 2 May 2001, Rollo, pp. 61-62.

[3] Filed on 04 May 2001, Rollo, pp. 103-112.

[4] The municipal election officer, Baybay, Leyte, had no fax machine (Certification, Rollo, p. 146). With the enactment of the E-Commerce Law, transmission by fax may be legal. R.A. No. 8792.

[5] Manifestation/Compliance, Annex "A", par. 5, Rollo, pp. 149-150, at p. 149.

[6] Affidavit, Rollo, pp. 126, 151.

[7] Petition, Annex "A", Rollo, pp. 19-21.

[8] Petition, Annex "B", Rollo, pp. 22-24.

[9] Petition, Annex "C", Rollo, pp. 25-26.

[10] Agenda, Law Department, Rollo, pp. 114-117.

[11] Petition, Annex "I", Rollo, pp. 56-60, at pp. 56-59.

[12] Petition, Annexes "H" and "I", Rollo, pp. 51-60.

[13] Filed on 27 April 2001. Rollo, pp. 3-18. On 2 May 2001, we required respondents to file comment on the petition, not a motion to dismiss, not later than 4 May 2001, Rollo, pp. 61-62. We now give due course to petition.

[14] *Montinola v. Commission on Elections*, 98 Phil. 220 [1956].

[15] *Ibid.*, at p. 223.

[16] Comelec Resolution No. 3253-A, Sec. 12, promulgated on 20 November 2000.

[17] *Cf. Palanca v. Court of Appeals*, 238 SCRA 593 [1994]

[18] Off-quoted definition of Webster is that procedural due process requires a law that hears before it condemns, proceeds upon inquiry, and renders judgment only after trial (*Flores v. Buencamino*, 74 SCRA 332 [1976]; *Lorenzana v. Cayetano*, 78 SCRA 485 [1977]; *Loquias v. Rodriguez*, 65 SCRA 659 [1975]; *Romero v. Court of Appeals*, 147 SCRA 183 [1987]).

[19] Order, dated 11 April 2001, Rollo, pp. 38-40.

[20] Petition, Annex “F”, Rollo, p. 41.

[21] Petition, Annex “G”, Rollo, pp. 42-50.

[22] *Villarosa v. Commission on Elections*, 319 SCRA 470 [1999].

[23] *Sandoval v. Commission on Elections*, 323 SCRA 403, 423 [2000]; *Cf. Go v. National Police Commission*, 338 Phil. 162, 171 [1997].

CONCURRING OPINION

BELLOSILLO, J.:

I fully concur with the majority opinion lucidly expressed in the ponencia of our colleague, Mr. Justice Pardo. Nonetheless, I wish to add the following observations if only to highlight in a way the directory nature of COMELEC Resolution No. 3253-A[1] on the matter of the withdrawal of certificates of candidacy as well as petitioner's compliance therewith. Specifically, Sec. 1, par. (b), of COMELEC Resolution No. 3253-A provides -

Sec. 1. Certificate of Candidacy. - x x x x (b) No person shall be eligible for more than one office to be filled in the same election. If he files a certificate of candidacy for more than one office he shall not be eligible for either. However before the expiration of the period for the filing of certificate of candidacy, he may declare under oath the office for which he desires to be eligible and cancel the certificate of candidacy for the other office or offices x x x x (underscoring supplied).

Section 12 of the same COMELEC Resolution on the withdrawal of a certificate of candidacy provides -

Sec. 12. Withdrawal of Certificate of Candidacy. - Any candidate who desires to withdraw his candidacy may at any time before election day file a statement of withdrawal under oath in five (5) legible copies with the office where the certificate of candidacy was filed.

The regional election director, provincial election supervisor or the election officer concerned shall, upon receipt of the withdrawal, retain a file copy and immediately forward to the Commission through the Law Department all the other copies. On the same date, he shall notify the Law Department by the fastest means of communication of the: a) full name of the candidate withdrawing; b) elective officer concerned; c) political party of the candidate, if any; and d) substitution made, if any.

The field officer concerned shall be notified of any withdrawal of candidacy and/or substitution filed with the Commission (underscoring supplied).

Quite noticeably, while Sec. 12 of COMELEC Resolution No. 3253-A requires that the statement of withdrawal be filed with the office where the certificate of candidacy was filed, there is absolutely no such requirement under the Omnibus Election Code. Instead, what Sec. 73, second par., of the Code simply provides is that a certificate of candidacy may be withdrawn by submitting to the office concerned a written declaration under oath.^[2] Hence, the COMELEC limited in effect the options of the candidates with regard to the venue where their candidacies could be withdrawn. The statutory authority of the COMELEC to promulgate rules and regulations implementing the provisions of the Omnibus Election Code or other laws which it is mandated to enforce and administer cannot be denied. But in the implementation and enforcement of those rules and regulations, it should always be guided by the tenets of justice and fair play, having in mind the attendant circumstances of each case.

It must be stressed that the COMELEC adopted Resolution No. 3253-A merely for expediency and for the sole purpose of facilitating the expeditious, orderly and convenient transaction of its business relative to the 14 May 2001 elections. It should perforce be construed to be directory or permissive, rather than mandatory or jurisdictional in character, for it could not have been possibly intended to supply a burden not found in the law. Considering the facts obtaining as heretofore recited in the ponencia, it can readily be said that petitioner substantially complied with the requirements for the withdrawal of her certificate of candidacy.

It will be recalled that at about 11:47 p.m. of 28 February 2001 (12:00 o'clock midnight being the deadline for the filing of certificates of candidacy), petitioner handed over to the Provincial Election Supervisor (PES) of Leyte for filing an Affidavit of Withdrawal of her certificate of candidacy for mayor of Baybay, Leyte, as she was instead filing her certificate of candidacy for Governor. The PES however refused to receive it; instead, he advised her to file the same with the Office of the Municipal Election Officer in Baybay, Leyte, pursuant to COMELEC Resolution No. 3253-A.

In this connection, I find nothing legally objectionable to the PES receiving petitioner's Affidavit of Withdrawal and thereafter transmitting it to what he may deem the appropriate COMELEC office. In fact, Director Jose P. Balbuena of the COMELEC Law Department admitted during the oral argument that the PES of Leyte could have validly received it and transmitted it to the Municipal Election Officer concerned. At any rate, such tender of the Affidavit to the PES, to my mind, produced the same effect as the filing thereof with the Municipal Election Officer of Baybay, Leyte. The right of a citizen to participate in the democratic process of election should not be defeated by unwarranted omissions and impositions of requirements not otherwise specified in any law.

Moreover, it is borne by the records that petitioner actually sent a copy of her Affidavit of Withdrawal to the COMELEC office of Baybay, Leyte, through facsimile and thereafter filed the original with the same office. Verily, whatever defect may have attended the tender of the Affidavit to the PES was cured by the subsequent transmittal of the document to the COMELEC office of Baybay, Leyte.

The fact that the facsimile was received by the COMELEC office of Baybay at exactly 12:28 a.m. of 1 March 2001, or 28 minutes past the deadline set by the COMELEC, could only be indecisive as it is inconsequential to the validity of the Affidavit of Withdrawal. We must yield to the reality of the situation. The sheer distance between Tacloban City from where petitioner sent the Affidavit by facsimile, and Baybay, Leyte - which is approximately 105 kilometers or about 2 hours drive - made it humanly impossible for petitioner to comply strictly with the appointed deadline. Sending the required Affidavit by facsimile was undoubtedly the fastest and the most practical means under the circumstances.

Be that as it may, there being no sign whatsoever that the 28-minute delay in the filing of the Affidavit of Withdrawal with the COMELEC office in Baybay, Leyte, was intended as a means to commit fraud, to prejudice rival candidates, or to affect the integrity of the coming elections in the province of Leyte, the same may be

excused in the interest of justice as a "harmless irregularity." [3]

Public respondent's contention that petitioner's inability to file her certificate of withdrawal on time with the election officer authorized to receive the same, unduly deprived other interested parties from filing their respective certificates of candidacy for the same position of mayor, deserves scant consideration. Primarily, Director Balbuena of the COMELEC Law Department admitted that there were no such parties interested to file certificates of candidacy for Mayor of Baybay, Leyte, at or about that time. But even assuming that there were other parties who wanted to run for the position, they were not at all prevented from doing so. Certainly, their candidacies could not be dependent on the political intentions or actuations of petitioner.

When election laws do not provide that a departure from a prescribed form will be fatal, and such departure was due to an honest mistake or misinterpretation of election laws on the part of one who must observe it, and the departure has not been used as a means for fraudulent practices, the law shall be held to be merely directory and any departure therefrom will only be considered a "harmless irregularity." For, inconsequential deviations which cannot affect the result of the election, or deviations from provisions intended primarily to secure timely and orderly conduct of elections, a directory construction is generally applied. The same ruling is given on acts not calculated to affect the integrity of the elections. [4]

Finally, petitioner who is an incumbent Representative of the Fifth District of Leyte duly elected by her constituency, and therefore expected to have a substantial following, cannot just be deprived summarily, or simply without due process, of her right to run for Governor of her province. Although a hearing for the reception of evidence of the parties was scheduled by COMELEC on 25 April 2001, prior to that date, or on 23 April 2001, COMELEC En Banc promulgated Resolution No. 3982 directing the cancellation of petitioner's name from the certified list of candidates for Governor of Leyte and for Mayor of Baybay Leyte. Verily, public respondent cannot disqualify a candidate without hearing and affording her an opportunity to adduce evidence in her behalf. The elementary requirements of due process must always be observed. [5]

For these reasons, I vote to GRANT the petition.

[1] "Rules and Regulations Governing the Filing of Certificates of Candidacy in Connection with the May 14, 2001 National and Local Elections," promulgated 20 November 2000.

[2] 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.

A person who has filed a certificate of candidacy may, prior to the election, withdraw the same by submitting to the office concerned a written declaration under oath.

No person shall be eligible for more than one office to be filled in the same election, and if he files his certificate of candidacy for more than one office, he shall not be eligible for any of them. However, before the expiration of the period for the filing of certificates of candidacy, the person who has filed more than one certificate of candidacy may declare under oath the office for which he desires to be eligible and cancel the certificate of candidacy for the other office or offices.

[3] See *Alialy v. Commission on Election*, L-16165, 31 July 1961, 2 SCRA 957.

[4] *Ibid.*

[5] *Singco v. COMELEC*, G.R. NO. 52830, 28 November 1980, 101 SCRA 420.

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