

EUFROCINO M. CODILLA, SR., PETITIONER, VS. HON. JOSE DE VENECIA, ROBERTO P. NAZARENO, IN THEIR OFFICIAL CAPACITIES AS SPEAKER AND SECRETARY-GENERAL OF THE HOUSE OF REPRESENTATIVES...*G.R. No. 150605. December 10, 2002*

Ponente: PUNO, J.

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In a democracy, the first self-evident principle is that he who has been rejected by the people cannot represent the people. Respondent Ma. Victoria L. Locsin lost to petitioner Eufrocino M. Codilla, Sr. by 17,903 votes in the May 14, 2001 elections as Representative of the 4th legislative district of Leyte. The most sophisticated legal alchemy cannot justify her insistence that she should continue governing the people of Leyte against their will. The enforcement of the sovereign will of the people is not subject to the discretion of any official of the land.

This is a Petition for Mandamus and Quo Warranto directed against respondents Speaker Jose De Venecia and Secretary-General Roberto P. Nazareno of the House of Representatives to compel them to implement the decision of the Commission on Elections en banc by (a) administering the oath of office to petitioner as the duly-elected Representative of the 4th legislative district of Leyte, and (b) registering the name of the petitioner in the Roll of Members of the House of Representatives, and against respondent Ma. Victoria L. Locsin for usurping, intruding into, and unlawfully holding and exercising the said public office on the basis of a void proclamation.

The facts are uncontroverted. Petitioner and respondent Locsin were candidates for the position of Representative of the 4th legislative district of Leyte during the May 14, 2001 elections. At that time, petitioner was the Mayor of Ormoc City while respondent Locsin was the sitting Representative of the 4th legislative district of Leyte. On May 8, 2001, one Josephine de la Cruz, a registered voter of Kananga, Leyte, filed directly with the COMELEC main office a Petition for Disqualification[1] against the petitioner for indirectly soliciting votes from the registered voters of Kananga and Matag-ob, Leyte, in violation of Section 68 (a) of the Omnibus Election Code. It was alleged that the petitioner used the equipments and vehicles owned by the City Government of Ormoc to extract, haul and distribute gravel and sand to the residents of Kananga and Matag-ob, Leyte, for the purpose of inducing, influencing or corrupting them to vote for him. Attached to the petition are the (a) Affidavits of Basilio Bates,[2] Danilo D. Maglasang,[3] Cesar A. Laurente,[4] (b) Joint Affidavit of Agripino C. Alferez and Rogelio T. Salvera,[5] (c) Extract Records from the Police Blotter executed by Police Superintendent Elson G. Pecho,[6] and (d) Photographs showing government dump trucks, haulers and surfacers and portions of public roads allegedly filled-in and surfaced through the intercession of the respondent.[7] The case was docketed as SPA No. 01-208 and assigned to the COMELEC's Second Division.

On May 10, 2001, the COMELEC Second Division issued an Order delegating the hearing and reception of evidence on the disqualification case to the Office of the Regional Director of Region VIII.[8] On May 11, 2001,

the COMELEC Second Division sent a telegram informing the petitioner that a disqualification case was filed against him and that the petition was remanded to the Regional Election Director for investigation.[9]

At the time of the elections on May 14, 2001, the Regional Election Director had yet to hear the disqualification case. Consequently, petitioner was included in the list of candidates for district representative and was voted for. The initial results showed that petitioner was the winning candidate.

On May 16, 2001, before the counting could be finished, respondent Locsin joined as intervenor in SPA No. 128 and filed a “Most Urgent Motion to Suspend Proclamation of Respondent [herein petitioner]” with the COMELEC Second Division.[10] Respondent Locsin alleged that “the evidence on record against respondent is very strong and unless rebutted remains.” She urged the Commission to set the hearing of the disqualification case and prayed for the suspension of the proclamation of the respondent “so as not to render the present disqualification case moot and academic.” A copy of the Motion was allegedly served on petitioner by registered mail but no registry receipt was attached thereto.[11]

On May 18, 2001, respondent Locsin filed a “Second Most Urgent Motion to Suspend Proclamation of Respondent” stating “there is clear and convincing evidence showing that the respondent is undoubtedly guilty of the charges against him and this remains unrebutted by the respondent.” A copy of the Motion was sent to the petitioner and the corresponding registry receipt was attached to the pleading.[12] The records, however, do not show the date the petitioner received the motion.

On the same day, May 18, 2001, the COMELEC Second Division issued an Ex-Parte Order[13] directing the Provincial Board of Canvassers of Leyte to suspend the proclamation of petitioner in case he obtains the highest number of votes by reason of “the seriousness of the allegations in the petition for disqualification.”[14] It also directed the Regional Election Director to speed up the reception of evidence and to forward immediately the complete records together with its recommendation to the Office of the Clerk of the Commission.[15] As a result, petitioner was not proclaimed as winner even though the final election results showed that he garnered 71,350 votes as against respondent Locsin’s 53,447 votes.[16]

At the time that the COMELEC Second Division issued its Order suspending his proclamation, the petitioner has yet to be summoned to answer the petition for disqualification. Neither has said petition been set for hearing. It was only on May 24, 2001 that petitioner was able to file an Answer to the petition for his disqualification with the Regional Election Director, alleging that: (a) he has not received the summons together with the copy of the petition; (b) he became aware of the matter only by virtue of the telegram sent by the COMELEC Second Division informing him that a petition was filed against him and that the Regional Election Director was directed to investigate and receive evidence therewith; and (c) he obtained a copy of the petition from the COMELEC Regional Office No. 8 at his own instance.[17] Petitioner further alleged that the maintenance, repair and rehabilitation of barangay roads in the municipalities of Matag-ob and Kananga were undertaken without his authority, participation or directive as City Mayor of Ormoc. He attached in his Answer the following: (a) Affidavit of Alex B. Borinaga;[18] (b) Copy of the Excerpt from the Minutes of the Regular Session of Barangay Monterico;[19] (c) Affidavit of Wilfredo A. Fiel;[20] (d) Supplemental Affidavit of Wilfredo A. Fiel;[21] and (e) Affidavit of Arnel Y. Padayao.[22]

On May 25, 2001, petitioner filed a Motion to Lift Order of Suspension,[23] alleging that (a) he did not receive a copy of the Motion to Suspend his Proclamation and hence, was denied the right to rebut and refute the allegations in the Motion; (b) that he did not receive a copy of the summons on the petition for disqualification and after personally obtaining a copy of the petition, filed the requisite answer only on May 24, 2001; and (c) that he received the telegraph Order of the COMELEC Second Division suspending his proclamation only on May 22,

2001. He attached documentary evidence in support of his Motion to Lift the Suspension of his proclamation, and requested the setting of a hearing on his Motion.[24]

On May 30, 2001, an oral argument was conducted on the petitioner's Motion and the parties were ordered to submit their respective memoranda.[25] On June 4, 2001, petitioner submitted his Memorandum[26] in support of his Motion assailing the suspension of his proclamation on the grounds that: (a) he was not afforded due process; (b) the order has no legal and factual basis; and (c) evidence of his guilt is patently inexistent for the purpose of suspending his proclamation. He prayed that his proclamation as winning congressional candidate be expediently made, even while the disqualification case against him continue upon due notice and hearing. He attached the following additional evidence in his Memorandum: (a) Copy of certification issued by PNP Senior Inspector Benjamin T. Gorre;[27] (b) Certification issued by Elena S. Aviles, City Budget Officer;[28] (c) Copy of certification issued by Wilfredo A. Fiel, City Engineer of Ormoc;[29] (d) Joint Affidavit of Antonio Patenio and Pepito Restituto;[30] and (e) Affidavits of Demetrio Brion,[31] Igmedio Rita[32] and Gerardo Monteza.[33] Respondent Locsin's memorandum also contained additional affidavits of his witnesses.[34]

Petitioner's Motion to Lift the Order of Suspension, however, was not resolved. Instead, on June 14, 2001, the COMELEC Second Division promulgated its Resolution[35] in SPA No. 01-208 which found the petitioner guilty of indirect solicitation of votes and ordered his disqualification. It directed the "immediate proclamation of the candidate who garnered the highest number of votes xxx." A copy of said Resolution was sent by fax to the counsel of petitioner in Cebu City in the afternoon of the following day.[36]

By virtue of the said Resolution, the votes cast for petitioner, totaling 71,350, were declared stray even before said Resolution could gain finality. On June 15, 2001, respondent Locsin was proclaimed as the duly elected Representative of the 4th legislative district of Leyte by the Provincial Board of Canvassers of Leyte. It issued a Certificate of Canvass of Votes and Proclamation of the Winning Candidates for Member of the House of Representatives stating that "MA. VICTORIA LARRAZABAL LOCSIN obtained a total of FIFTY THREE THOUSAND FOUR HUNDRED FORTY SEVEN (53,447) votes representing the highest number of votes legally cast in the legislative district for said office." [37] Respondent Locsin took her oath of office on June 18, 2001 and assumed office on June 30, 2001.

On June 20, 2001, petitioner seasonably filed with the COMELEC en banc a Motion for Reconsideration[38] from the June 14, 2001 Resolution of the COMELEC Second Division which ordered his disqualification, as well as an Addendum to the Motion for Reconsideration.[39] Petitioner alleged in his Motion for Reconsideration that the COMELEC Second Division erred: (1) in disqualifying petitioner on the basis solely of the dubious declaration of the witnesses for respondent Locsin; (2) in adopting in toto the allegations of the witnesses for respondent Locsin; and (3) in promulgating the resolution in violation of its own rules of procedure and in directing therein the immediate proclamation of the second highest 'vote getter.' Respondent Locsin and her co-petitioner in SPA No. 01-208 filed a joint Opposition to the Motion for Reconsideration.[40]

On June 21, 2001, petitioner filed with the COMELEC en banc a Petition for Declaration of Nullity of Proclamation,[41] docketed as SPC No. 01-324, assailing the validity of the proclamation of respondent Locsin who garnered only the second highest number of votes. Respondent Locsin filed her Answer alleging that: (1) the Commission lost jurisdiction to hear and decide the case because of the proclamation of Locsin and that any question on the "election, returns, and qualification" of Locsin can only be taken cognizance of by the House of Representatives Electoral Tribunal (HRET); (2) the case should be filed and heard in the first instance by a Division of the Commission and not directly by the Commission en banc; and (3) the proclamation of Locsin was valid because she received the highest number of valid votes cast, the votes of Codilla being stray.

On June 28, 2001, petitioner filed an Urgent Manifestation[42] stating that he was deprived of a fair hearing on the disqualification case because while the documentary evidence adduced in his Memorandum was in support of his Motion for the lifting of the suspension of his proclamation, the COMELEC Second Division instead ruled on the main disqualification case. In consonance with his prayer that a full-dress hearing be conducted on the disqualification case, he submitted Affidavits of additional witnesses[43] which he claims would refute and substantially belie the allegations of petitioner's/intervenor's witnesses. A Reply,[44] Rejoinder[45] and Sur-Rejoinder[46] were respectively filed by the parties. Consequently, the motion for reconsideration in SPA No. 01-208 and the petition for declaration of nullity in SPC No. 01-324 were submitted for resolution.

From the records, it appears that initially, a "Resolution" penned by Commissioner Rufino S.B. Javier, dated July 24, 2001, was submitted to the Office of the Chairman, dismissing the petition for declaration of nullity for lack of jurisdiction and denying the motion for reconsideration filed by petitioner Codilla.[47] Commissioners Florentino A. Tuason, Jr. and Resurreccion Z. Borra submitted their respective dissenting opinions[48] to the Javier resolution. It bears emphasis that Commissioner Tuason, Jr. was the ponente of the Resolution of the COMELEC Second Division which ordered the disqualification of petitioner but after considering the additional evidence presented by the latter, he concluded that the totality of the evidence was clearly in petitioner's favor. Equally worth mentioning is the fact that Commissioner Ralph C. Lantion, who was the Presiding Commissioner of the Second Division, also dissented and voted to grant Codilla's motion for reconsideration on the ground that "[T]he people of Leyte have spoken and I respect the electorate's will. x x x." [49]

On August 29, 2001, then COMELEC Chairman Alfredo L. Benipayo issued a "Vote and Opinion and Summary of Votes" reversing the resolution of the Second Division and declaring the proclamation of respondent Locsin as null and void. The dispositive portion reads:

"JUDGMENT

WHEREFORE, in view of all the foregoing considerations, I concur with Commissioner Resurreccion Z. Borra, Commissioner Florentino A. Tuason, Jr. and Commissioner Ralph C. Lantion, in SPA No. 01-208, to GRANT the motion for reconsideration and to REVERSE the resolution of the Commission (Second Division) promulgated on June 1, 2001, disqualifying Codilla; and subsequently, in SPC No. 01-324, to GRANT the petition of Eufrocino M. Codilla, Sr., and declare as null and void the proclamation of losing candidate Locsin.

Accordingly:

1. On the Motion for Reconsideration of the disqualification resolution against Codilla, promulgated by the Commission (Second Division) on June 14, 2001 (SPA No. 01-208), I vote:

(a) to GRANT the Motion for Reconsideration of respondent-movant Eufrocino M. Codilla, Sr., and to REVERSE the Resolution of the Commission (Second Division) promulgated on June 14, 2001, for insufficiency of evidence;

(b) to lift the order of suspension of proclamation of petitioner Codilla, issued by the Commission (Second Division) on May 18, 2001, having been issued without hearing and without any finding that the evidence of guilt of petitioner Codilla is strong and, thus, null and void;

(c) to nullify the order contained in the Resolution of the Commission (Second Division) promulgated on June 14, 2001, for "(t)he immediate proclamation of the candidate who garnered the highest number of votes, to the exclusion of respondent" and the concurrent order for "the Provincial Board of Canvasser (sic) of Leyte to immediately reconvene and thereafter proclaim forthwith the candidate who obtained the highest number of votes counting out the Respondent" the same being violative of election laws, established jurisprudence, and resolutions of the Commission;

(d) to nullify the ruling contained in the Resolution of the Commission (Second Division) promulgated on June 14, 2001, that the votes of respondent Codilla are “considered stray and invalid” said ruling being issued on the basis of an inapplicable decision, and contrary to established jurisprudence;

(e) to order the Provincial Board of Canvassers of Leyte, upon the finality of this resolution, to reconvene and proclaim petitioner Codilla as the winning candidate for Representative of the Fourth Legislative district of Leyte to comply with its ministerial duty to proclaim the candidate who garnered the highest number of votes in the elections for that position; and

(f) to order intervenor-oppositor Locsin, upon the finality of this resolution, to vacate the office of Representative of the House of Representatives representing the Fourth legislative district of Leyte and, for this purpose, to inform the House of Representatives through the Honorable Speaker of this resolution for its attention and guidance; and

2. On the petition for Declaration of Nullity of proclamation of respondent Ma. Victoria L. Locsin (SPC No. 01-324), I vote:

(a) to GRANT the petition of Eufrocino M. Codilla, Sr., and declare as null and void the proclamation of losing candidate Locsin, the proclamation being violative of election laws, established jurisprudence, and resolutions of the Commission on Elections;

(b) to lift the order of suspension of proclamation of petitioner Codilla, issued by the Commission (Second Division) on May 18, 2001, in SPA No. 01-208, having been issued without hearing and without any finding that the evidence of guilt of petitioner Codilla is strong and, thus, null and void;

(c) to nullify the order contained in the Resolution of the Commission (Second Division) promulgated on June 14, 2001, in SPA No. 01-208, for “(t)he immediate proclamation of the candidate who garnered the highest number of votes, to the exclusion of respondent” and the concurrent order for “the provincial Board of Canvasser (sic) of Leyte to immediately reconvene and thereafter proclaim forthwith the candidate who obtained the highest number of votes counting out the Respondent” the same being violative of election laws, established jurisprudence, and resolutions of the Commission;

(d) to nullify the ruling contained in the Resolution of the Commission (Second Division) promulgated on June 14, 2001, in SPA No. 01-208, that the votes of respondent Codilla are “considered stray and invalid” said ruling being issued on the basis of an inapplicable decision, and contrary to established jurisprudence;

(e) to order the provincial Board of Canvassers of Leyte, upon the finality of this resolution, to reconvene and proclaim petitioner Codilla as the winning candidate for Representative of the Fourth legislative district of Leyte he (sic) having garnered the highest number of votes in the elections for the position; and

(f) to order respondent Locsin, upon the finality of this resolution, to vacate the office of Representative of the House of Representatives representing the Fourth Legislative district of Leyte and, for this purpose, to inform the House of Representatives through the Honorable Speaker of this resolution for its attention and guidance.

Summary of Votes

Considering the FOUR (4) VOTES of the Chairman and Commissioners Resurreccion Z. Borra, Florentino A. Tuason, Jr., and Ralph C. Lantion, to grant the Motion for Reconsideration of Codilla and reverse the disqualification Resolution of the Commission (Second Division) in SPA No. 01-208, promulgated on June 14, 2001, and as an inevitable consequence, in voting to grant the petition for declaration of nullity of the proclamation of Ma. Victoria L. Locsin in SPC No. 01-324, the verdict/opinion of the Chairman and the three (3) Commissioners taken together now stands, as it is, the MAJORITY DECISION of the Commission En Banc in both cases; and the “Resolution” submitted by three (3) Commissioners, namely, Commissioner Rufino S.B. Javier, Commissioner Luzviminda G. Tancangco, and Commissioner Mehol K. Sadain, is

considered, as it is, the MINORITY DECISION of the Commission En Banc in both cases.

The MAJORITY DECISION was arrived at after proper consultation with those who joined the majority. The Chairman and the three (3) Commissioners comprising the majority decided that no one will be assigned to write a Majority Decision. Instead, each one will write his own separate opinion. Commissioners Borra, Tuason, Jr. and the undersigned Chairman submitted separate opinions. Commissioner Lantion wrote an explanation on his vote.”[50]

The aforementioned judgment was adopted in a “Vote of Adoption” signed by Commissioners Ralph C. Lantion, Resurreccion Z. Borra and Florentino A. Tuason, Jr.[51]

Respondent Locsin did not appeal from this decision annulling her proclamation. Instead, she filed a “Comment and Manifestation”[52] with the COMELEC en banc questioning the procedure and the manner by which the decision was issued. In addition, respondent Locsin requested and was issued an opinion by House of Representatives Executive Director and Chief Legal Counsel Leonardo B. Palicte III declaring that the COMELEC has no jurisdiction to nullify the proclamation of respondent Locsin after she had taken her oath and assumed office since it is the HRET which is the sole judge of election, returns and qualifications of Members of the House.[53] Relying on this opinion, respondent Locsin submitted a written privileged speech to the House during its regular session on September 4, 2001, where she declared that she will not only disregard but will openly defy and disobey the COMELEC en banc resolution ordering her to vacate her position.[54]

On September 6, 2001, the COMELEC en banc issued an Order[55] constituting the members of the Provincial Board of Canvassers of Leyte to implement the aforesaid decision. It likewise ordered the Board to reconvene and “proclaim the candidate who obtained the highest number of votes in the district, as the duly-elected Representative of the Fourth Legislative district of Leyte, and accordingly issue a Certificate of Canvass and Proclamation of Winning Candidate for Member of the House of Representatives x x x, based on the city/municipal certificates of canvass submitted beforehand to the previous Provincial Board of Canvassers of Leyte x x x.”

On September 12, 2001, petitioner Codilla was proclaimed by the Provincial Board of Canvassers as the duly-elected Representative of the 4th legislative district of Leyte, having obtained a total of 71,350 votes representing the highest number of votes cast in the district.[56] On the same day, petitioner took his oath of office before Executive Judge Fortunito L. Madrona of the Regional Trial Court of Ormoc City.[57]

On September 14, 2001, petitioner wrote the House of Representatives, thru respondent Speaker De Venecia, informing the House of the August 29, 2001 COMELEC en banc resolution annulling the proclamation of respondent Locsin, and proclaiming him as the duly-elected Representative of the 4th legislative district of Leyte.[58] Petitioner also served notice that “I am assuming the duties and responsibilities as Representative of the fourth legislative district of Leyte to which position I have been lawfully elected and proclaimed. On behalf of my constituents, I therefore expect that all rights and privileges intended for the position of Representative of the fourth legislative district of Leyte be accorded to me, including all physical facilities and staff support.” On the basis of this letter, a Memorandum[59] dated October 8, 2001 was issued by Legal Affairs Deputy Secretary-General Gaudencio A. Mendoza, Jr., for Speaker De Venecia, stating that “there is no legal obstacle to complying with the duly promulgated – and now final and executory – COMELEC Decision of August 29, 2001 x x x.”

These notwithstanding, and despite receipt by the House of Representatives of a copy of the COMELEC en banc resolution on September 20, 2001,[60] no action was taken by the House on the letter-appeal of petitioner. Hence, petitioner sought the assistance of his party, LAKAS-NUCD-UMDP, which sent a letter[61] addressed to

respondent Speaker De Venecia, dated October 25, 2001, and signed by Party President Teofisto T. Guingona, Jr., Secretary-General Heherson T. Alvarez, and Region VIII Party Chairman Sergio Antonio F. Apostol, requesting the House of Representatives to act decisively on the matter in order that petitioner “can avail of whatever remedy is available should their action remain unfavorable or otherwise undecisive.”

In response, Speaker De Venecia sent a letter^[62] dated October 30, 2001, stating that:

"We recognize the finality of the COMELEC decision and we are inclined to sustain it. However, Rep. Locsin has officially notified the HOUSE in her privilege speech, inserted in the HOUSE Journal dated September 4, 2001, that she shall ‘openly defy and disobey’ the COMELEC ruling. This ultimately means that implementing the decision would result in the spectacle of having two (2) legislators occupying the same congressional seat, a legal situation, the only consideration, that effectively deters the HOUSE’s liberty to take action.

In this light, the accepted wisdom is that the implementation of the COMELEC decision is a matter that can be best, and with finality, adjudicated by the Supreme Court, which, hopefully, shall act on it most expeditiously.” (emphases supplied)

Hence, the present petition for mandamus and quo warranto.

Petitioner submits that by virtue of the resolution of the COMELEC en banc which has become final and executory for failure of respondent Locsin to appeal therefrom, it has become the ministerial duty: (1) of the Speaker of the House of Representatives, as its Administrative Head and Presiding Officer, to implement the said resolution of the COMELEC en banc by installing him as the duly-elected Representative of the 4th legislative district of Leyte; and (2) of the Secretary-General, as official custodian of the records of the House, to formally register his name in the Roll of Members of the House and delete the name of respondent Locsin therefrom. Petitioner further contends that respondent Locsin has been usurping and unlawfully holding the public office of Representative of the 4th legislative district of Leyte considering that her premature proclamation has been declared null and void by the COMELEC en banc. He alleges that the action or inaction of public respondents has deprived him of his lawful right to assume the office of Representative of the 4th legislative district of Leyte.

In his Comment,^[63] public respondent Speaker De Venecia alleged that mandamus will not lie to compel the implementation of the COMELEC decision which is not merely a ministerial duty but one which requires the exercise of discretion by the Speaker of the House considering that: (1) it affects the membership of the House; and (2) there is nothing in the Rules of the House of Representatives which imposes a duty on the House Speaker to implement a COMELEC decision that unseats an incumbent House member.

In his Comment,^[64] public respondent Secretary-General Nazareno alleged that in reading the name of respondent Locsin during the roll call, and in allowing her to take her oath before the Speaker-elect and sit as Member of the House during the Joint Session of Congress, he was merely performing official acts in compliance with the opinions^[65] rendered by House of Representatives Chief Counsel and Executive Director Leonardo C. Palicte III stating that the COMELEC has no jurisdiction to declare the proclamation of respondent Locsin as null and void since it is the HRET which is the sole judge of all election, returns and qualifications of Members of the House. He also contends that the determination of who will sit as Member of the House of Representatives is not a ministerial function and cannot, thus, be compelled by mandamus.

Respondent Locsin, in her Comment,^[66] alleged that the Supreme Court has no original jurisdiction over an action for quo warranto involving a member of the House of Representatives for under Section 17, Article VI of the Constitution it is the HRET which is the sole judge of all contests relating to the election, returns and qualifications of Members of the House of Representatives. She likewise asserts that this Court cannot issue the

writ of mandamus against a co-equal legislative department without grossly violating the principle of separation of powers. She contends that the act of recognizing who should be seated as a bona fide member of the House of Representatives is not a ministerial function but a legislative prerogative, the performance of which cannot be compelled by mandamus. Moreover, the prayer for a writ of mandamus cannot be directed against the Speaker and Secretary-General because they do not have the authority to enforce and implement the resolution of the COMELEC.

Additionally, respondent Locsin urges that the resolution of the COMELEC en banc is null and void for lack of jurisdiction. First, it should have dismissed the case pending before it after her proclamation and after she had taken her oath of office. Jurisdiction then was vested in the HRET to unseat and remove a Member of the House of Representatives. Second, the petition for declaration of nullity is clearly a pre-proclamation controversy and the COMELEC en banc has no original jurisdiction to hear and decide a pre-proclamation controversy. It must first be heard by a COMELEC Division. Third, the questioned decision is actually a “hodge-podge” decision because of the peculiar manner in which the COMELEC disposed of the case.

Finally, respondent Locsin asserts that the matter of her qualification and eligibility has been categorically affirmed by the HRET when it dismissed the quo warranto case filed against her, docketed as HRET Case No. 01-043, entitled “Paciano Traverro vs. Ma. Victoria Locsin,” on the ground that “the allegations stated therein are not proper grounds for a petition for quo warranto against a Member of the House of Representatives under section 253 of the Omnibus Election Code and Rule 17 of the HRET Rules, and that the petition was filed late.”[67]

In his Reply,[68] petitioner asserts that the remedy of respondent Locsin from the COMELEC decision was to file a petition for certiorari with the Supreme Court, not to seek an opinion from the Chief Legal Counsel of the House of Representatives; that the HRET has no jurisdiction over a petition for declaration of nullity of proclamation which is based not on ineligibility or disloyalty, but by reason that the candidate proclaimed as winner did not obtain the highest number of votes; that the petition for annulment of proclamation is a pre-proclamation controversy and, hence, falls within the exclusive jurisdiction of the COMELEC pursuant to section 242 of B.P. Blg. 881[69] and section 3, Article IX (C) of the Constitution; that respondent Speaker De Venecia himself recognizes the finality of the COMELEC decision but has decided to refer the matter to the Supreme Court for adjudication; that the enforcement and implementation of a final decision of the COMELEC involves a ministerial act and does not encroach on the legislative power of Congress; and that the power to determine who will sit as Member of the House does not involve an exercise of legislative power but is vested in the sovereign will of the electorate.

The core issues in this case are: (a) whether the proclamation of respondent Locsin by the COMELEC Second Division is valid; (b) whether said proclamation divested the COMELEC en banc of jurisdiction to review its validity; and (c) assuming the invalidity of said proclamation, whether it is the ministerial duty of the public respondents to recognize petitioner Codilla, Sr. as the legally elected Representative of the 4th legislative district of Leyte vice respondent Locsin.

I

Whether the proclamation of respondent Locsin is valid.

After carefully reviewing the records of this case, we find that the proclamation of respondent Locsin is null and void for the following reasons:

First. The petitioner was denied due process during the entire proceedings leading to the proclamation of

respondent Locsin.

COMELEC Resolution Nos. 3402[70] sets the procedure for disqualification cases pursuant to section 68 of the Omnibus Election Code, viz:

“C. PETITION TO DISQUALIFY A CANDIDATE PURSUANT TO SEC. 68 OF THE OMNIBUS ELECTION CODE AND PETITION TO DISQUALIFY FOR LACK OF QUALIFICATIONS OR POSSESSING SAME GROUNDS FOR DISQUALIFICATION

(1) The verified petition to disqualify a candidate pursuant to Sec. 68 of the Omnibus Election Code and the verified petition to disqualify a candidate for lack of qualifications or possessing same grounds for disqualification, may be filed any day after the last day for filing of certificates of candidacy but not later than the date of proclamation.

(2) The petition to disqualify a candidate pursuant to Sec. 68 of the Omnibus Election Code shall be filed in ten (10) legible copies by any citizen of voting age, or duly registered political party, organization or coalition of political parties against any candidate who in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of:

2.a having given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions;

2.b having committed acts of terrorism to enhance his candidacy;

2.c having spent in his election campaign an amount in excess of that allowed by the Omnibus Election Code;

2.d having solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104 of the Omnibus Election Code;

2.e having violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6 of the Omnibus Election Code, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office.

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(4) Upon payment of the filing fee of P1,000.00 and legal research fee of P20.00, the offices concerned shall docket the petition and assign to it a docket number which must be consecutive, according to the order of receipt and must bear the year and prefixed as SPA with the corresponding initial of the name of the office, i.e. SPA (RED) No. C01-001; SPA (PES) No. C01-001;

(5) Within three (3) days from filing of the petitions, the offices concerned shall issue summons to the respondent candidate together with a copy of the petition and its enclosures, if any;

(6) The respondent shall be given three (3) days from receipt of summons within which to file his verified answer (not a motion to dismiss) to the petition in ten (10) legible copies, serving a copy thereof upon the petitioner. Grounds for Motion to Dismiss may be raised as an affirmative defense;

(7) The proceeding shall be summary in nature. In lieu of the testimonies, the parties shall submit their affidavits or counter-affidavits and other documentary evidences including their position paper;

(8) The hearing must be completed within ten (10) days from the date of the filing of the answer. The hearing officer concerned shall submit to the Clerk of the Commission through the fastest means of communication, his findings, reports and recommendations within five (5) days from the completion of the hearing and reception of evidence together with the complete records of the case;

(9) Upon receipt of the records of the case of the findings, reports and recommendation of the hearing officer

concerned, the Clerk of the Commission shall immediately docket the case consecutively and calendar the same for raffle to a division;

(10) The division to whom the case is raffled, shall after consultation, assign the same to a member who shall pen the decision, within five (5) days from the date of consultation.”

Resolution No. 3402 clearly requires the COMELEC, through the Regional Election Director, to issue summons to the respondent candidate together with a copy of the petition and its enclosures, if any, within three (3) days from the filing of the petition for disqualification. Undoubtedly, this is to afford the respondent candidate the opportunity to answer the allegations in the petition and hear his side. To ensure compliance with this requirement, the COMELEC Rules of Procedure requires the return of the summons together with the proof of service to the Clerk of Court of the COMELEC when service has been completed, viz:

“Rule 14. Summons

X X X X X X X X

Section 5. Return.- When the service has been completed by personal service, the server shall give notice thereof, by registered mail, to the protestant or his counsel and shall return the summons to the Clerk of Court concerned who issued it, accompanied with the proof of service.

Section 6. Proof of Service.- Proof of service of summons shall be made in the manner provided for in the Rules of Court in the Philippines.”

Thereafter, hearings, to be completed within ten (10) days from the filing of the Answer, must be conducted. The hearing officer is required to submit to the Clerk of the Commission his findings, reports and recommendations within five (5) days from the completion of the hearing and reception of evidence together with the complete records of the case.

(a) Petitioner was not notified of the petition for his disqualification through the service of summons nor of the Motions to suspend his proclamation.

The records of the case do not show that summons was served on the petitioner. They do not contain a copy of the summons allegedly served on the petitioner and its corresponding proof of service. Furthermore, private respondent never rebutted petitioner’s repeated assertion that he was not properly notified of the petition for his disqualification because he never received summons.[71] Petitioner claims that prior to receiving a telegraphed Order from the COMELEC Second Division on May 22, 2001, directing the District Board of Canvassers to suspend his proclamation, he was never summoned nor furnished a copy of the petition for his disqualification. He was able to obtain a copy of the petition and the May 22 Order of the COMELEC Second Division by personally going to the COMELEC Regional Office on May 23, 2001. Thus, he was able to file his Answer to the disqualification case only on May 24, 2001.

More, the proclamation of the petitioner was suspended in gross violation of section 72 of the Omnibus Election Code which provides:

“Sec. 72. Effects of disqualification cases and priority.- The Commission and the courts shall give priority to cases of disqualification by reason of violation of this Act to the end that a final decision shall be rendered not later than seven days before the election in which the disqualification is sought.

Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. Nevertheless, if for any reason, a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, his violation of the provisions of the preceding sections shall not prevent his proclamation and

assumption to office.” (emphases supplied)

In the instant case, petitioner has not been disqualified by final judgment when the elections were conducted on May 14, 2001. The Regional Election Director has yet to conduct hearing on the petition for his disqualification. After the elections, petitioner was voted in office by a wide margin of 17,903. On May 16, 2001, however, respondent Locsin filed a Most Urgent Motion for the suspension of petitioner’s proclamation. The Most Urgent Motion contained a statement to the effect that a copy was served to the petitioner through registered mail. The records reveal that no registry receipt was attached to prove such service.[72] This violates COMELEC Rules of Procedure requiring notice and service of the motion to all parties, viz:

“Section 4. Notice.- Notice of a motion shall be served by the movant to all parties concerned, at least three (3) days before the hearing thereof, together with a copy of the motion. For good cause shown, the motion may be heard on shorter notice, especially on matters which the Commission or the Division may dispose of on its own motion.

The notice shall be directed to the parties concerned and shall state the time and place of the hearing of the motion.

Section 5. Proof of Service.- No motion shall be acted upon by the Commission without proof of service of notice thereof, except when the Commission or a Division is satisfied that the rights of the adverse party or parties are not affected.”

Respondent’s Most Urgent Motion does not fall under the exceptions to notice and service of motions. First, the suspension of proclamation of a winning candidate is not a matter which the COMELEC Second Division can dispose of *motu proprio*. Section 6 of R.A. No. 6646[73] requires that the suspension must be “upon motion by the complainant or any intervenor”, viz:

“Section 6. Effect of Disqualification Case.- Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason, a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission (COMELEC) shall continue with the trial or hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong.” (emphases supplied)

Second, the right of an adverse party, in this case, the petitioner, is clearly affected. Given the lack of service of the Most Urgent Motion to the petitioner, said Motion is a mere scrap of paper.[74] It cannot be acted upon by the COMELEC Second Division.

On May 18, 2001 at exactly 5:00 p.m.,[75] respondent Locsin filed a Second Most Urgent Motion for the suspension of petitioner’s proclamation. Petitioner was served a copy of the Second Motion again by registered mail. A registry receipt[76] was attached evidencing service of the Second Most Urgent Motion to the petitioner but it does not appear when the petitioner received a copy thereof. That same day, the COMELEC Second Division issued an Order suspending the proclamation of petitioner. Clearly, the petitioner was not given any opportunity to contest the allegations contained in the petition for disqualification. The Order was issued on the very same day the Second Most Urgent Motion was filed. The petitioner could not have received the Second Most Urgent Motion, let alone answer the same on time as he was served a copy thereof by registered mail.

Under section 6 of R.A. No. 6646, the COMELEC can suspend proclamation only when evidence of the winning candidate’s guilt is strong. In the case at bar, the COMELEC Second Division did not make any specific finding that evidence of petitioner’s guilt is strong. Its only basis in suspending the proclamation of the petitioner is the

“seriousness of the allegations” in the petition for disqualification. Pertinent portion of the Order reads:

“Without giving due course to the petition xxx the Commission (2nd Division), pursuant to Section 72 of the Omnibus Election Code in relation to Section 6, Republic Act No. 6646 xxx and considering the serious allegations in the petition, hereby directs the Provincial Board of Canvassers of Leyte to suspend the proclamation of respondent, if winning, until further orders.”[77] (emphases supplied)

We hold that absent any finding that the evidence on the guilt of the petitioner is strong, the COMELEC Second Division gravely abused its power when it suspended his proclamation.

(b) The COMELEC Second Division did not give ample opportunity to the petitioner to adduce evidence in support of his defense in the petition for his disqualification.

All throughout the proceeding, no hearing was conducted on the petition for disqualification in gross violation of section 6 of R.A. No. 6646 which specifically enjoins the COMELEC to “continue with the trial or hearing of the action, inquiry, or protest.” This is also in violation of COMELEC Resolution No. 3402 requiring the Regional Election Director to complete the hearing and reception of evidence within ten (10) days from the filing of the Answer, and to submit his findings, reports, and recommendations within the five (5) days from completion of the hearing and the reception of evidence.

Petitioner filed a Motion to Lift the Order of Suspension of his proclamation on May 25, 2001. Although an oral argument on this Motion was held, and the parties were allowed to file their respective memoranda, the Motion was not acted upon. Instead, the COMELEC Second Division issued a Resolution on the petition for disqualification against the petitioner. It was based on the following evidence: (a) the affidavits attached to the Petition for Disqualification; (b) the affidavits attached to the Answer; and (c) the respective memoranda of the parties.

On this score, it bears emphasis that the hearing for Motion to Lift the Order of Suspension cannot be substituted for the hearing in the disqualification case. Although intrinsically linked, it is not to be supposed that the evidence of the parties in the main disqualification case are the same as those in the Motion to Lift the Order of Suspension. The parties may have other evidence which they may deem proper to present only on the hearing for the disqualification case. Also, there may be evidence which are unavailable during the hearing for the Motion to Lift the Order of Suspension but which may be available during the hearing for the disqualification case.

In the case at bar, petitioner asserts that he submitted his Memorandum merely to support his Motion to Lift the Order of Suspension. It was not intended to answer and refute the disqualification case against him. This submission was sustained by the COMELEC en banc. Hence, the members of the COMELEC en banc concluded, upon consideration of the additional affidavits attached in his Urgent Manifestation, that the evidence to disqualify the petitioner was insufficient. More specifically, the ponente of the challenged Resolution of the COMELEC Second Division held:

“Indeed, I find from the records that the May 30, 2001 hearing of the COMELEC (Second Division) concerns only the incident relating to the Motion to Lift Order of Suspension of Proclamation. It also appears that the order for the submission of the parties’ respective memoranda was in lieu of the parties’ oral argument on the motion. This would explain the fact that Codilla’s Memorandum refers mainly to the validity of the issuance of the order of suspension of proclamation. There is, however, no record of any hearing on the urgent motion for the suspension of proclamation. Indeed, it was only upon the filing of the Urgent Manifestation by Codilla that the Members of the Commission (Second Division) and other Members of the Commission en banc had the opportunity to consider Codilla’s affidavits. This time, Codilla was able to present his side, thus, completing the presentation of evidentiary documents from both sides.”[78] (emphases supplied)

Indeed, careful reading of the petitioner's Memorandum shows that he confined his arguments in support of his Motion to Lift the Order of Suspension. In said Memorandum, petitioner raised the following issues: (a) he was utterly deprived of procedural due process, and consequently, the order suspending his proclamation is null and void; (b) the said order of suspension of proclamation has no legal and factual basis; and (c) evidence of guilt on his part is patently inexistent for the purpose of directing the suspension of his proclamation.[79] He urged the COMELEC Second Division to conduct a full dress hearing on the main disqualification case should the suspension be lifted.[80]

(c) the Resolution of the COMELEC Second Division disqualifying the petitioner is not based on substantial evidence.

The Resolution of the COMELEC Second Division cannot be considered to be based on substantial evidence. It relied merely on affidavits of witnesses attached to the petition for disqualification. As stressed, the COMELEC Second Division gave credence to the affidavits without hearing the affiants. In reversing said Resolution, the COMELEC en banc correctly observed:

"Lacking evidence of Codilla, the Commission (Second Division) made its decisions based mainly on the allegation of the petitioner and the supporting affidavits. With this lopsided evidence at hand, the result was predictable. The Commission (Second Division) had no choice. Codilla was disqualified." [81]

Worse, the Resolution of the COMELEC Second Division, even without the evidence coming from the petitioner, failed to prove the gravamen of the offense for which he was charged.[82]

Petitioner allegedly violated section 68 (a) of the Omnibus Election Code which reads:

"Section 68. Disqualifications.- Any candidate who, in action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing official functions, xxx shall be disqualified from continuing as candidate, or if he has been elected, from holding office"

To be disqualified under the above-quoted provision, the following elements must be proved: (a) the candidate, personally or through his instructions, must have given money or other material consideration; and (b) the act of giving money or other material consideration must be for the purpose of influencing, inducing, or corrupting the voters or public officials performing electoral functions.

In the case at bar, the petition for disqualification alleged that (a) petitioner ordered the extraction, hauling and distribution of gravel and sand, and (b) his purpose was to induce and influence the voters of Kananga and Matag-ob, Leyte to vote for him. Pertinent portion of the petition reads:

"[T]he respondent [herein petitioner], within the election period, took advantage of his current elective position as City Mayor of Ormoc City by illegally and unlawfully using during the prohibited period, public equipments and vehicles belonging to and owned by the City Government of Ormoc City in extracting, hauling and distributing gravel and sand to the residents and voters of the Municipalities of Kananga and Matag-ob Leyte, well within the territorial limits of the 4th Congressional District of Leyte, which acts were executed without period, and clearly for the illicit purpose of unduly inducing or directly corrupting various voters of Kananga and Matag-ob, within the 4th legislative district of Leyte, for the precise purpose of inducing and influencing the voters/beneficiaries of Kananga and Matag-ob, Leyte to cast their votes for said respondent." [83]

The affidavits relied upon by the COMELEC Second Division failed to prove these allegations. For instance, Cesar A. Laurente merely stated that he saw three (3) ten-wheeler dump trucks and a Hyundai Payloader with the

markings “Ormoc City Government” extracting and hauling sand and gravel from the riverbed adjacent to the property owned by the Codilla family.[84]

Agripino C. Alferez and Rogelio T. Sulvera in their Joint Affidavit merely stated that they saw white trucks owned by the City Government of Ormoc dumping gravel and sand on the road of Purok 6, San Vicente, Matag-ob, Leyte. A payloader then scattered the sand and gravel unloaded by the white trucks.[85]

On the other hand, Danilo D. Maglasang, a temporary employee of the City Government of Ormoc assigned to check and record the delivery of sand and gravel for the different barangays in Ormoc, stated as follows:

“3. That on April 20, 2001, I was ordered by Engr. Arnel Padayo, an employee of the City Engineering Office, Ormoc City to go to Tagaytay, Kangga (sic), Leyte as that will be the source of the sand and gravel. I inquired why we had to go to Kananga but Engr. Padayao said that it’s not a problem as it was Mayor Eufrocino M. Codilla, Sr. who ordered this and the property is owned by the family of Mayor Codilla. We were to deliver sand and gravel to whoever requests from Mayor Codilla.”[86]

Similarly, the Affidavit of Basilio Bates cannot prove the offense charged against the petitioner. He alleged that on April 18, 2001, a white truck with the marking “City Government of Ormoc” came to his lot at Montebello, Kananga, Leyte and unloaded mixed sand and that the driver of the truck told him to “vote for Codilla as a (sic) congressman during election.”[87] His statement is hearsay. He has no personal knowledge of the supposed order of the petitioner to distribute gravel and sand for the purpose of inducing the voters to vote for him. The same could be said about the affidavits of Randy T. Merin,[88] Alfredo C. De la Peña,[89] Miguel P. Pandac,[90] Paquito Bregeldo, Cristeta Alferez, Glicerio Rios,[91] Romulo Alkuino, Sr.,[92] Abner Casas,[93] Rita Trangia,[94] and Judith Erispe[95] attached to respondent Locsin’s Memorandum on the Motion to Lift the Suspension of Proclamation.

Also valueless are the affidavits of other witnesses[96] of respondent Locsin, all similarly worded, which alleged that the petitioner ordered the repair of the road in Purok 6, Barangay San Vicente, Matag-ob, Leyte and the flattening of the area where the cockfights were to be held. These allegations are extraneous to the charge in the petition for disqualification. More importantly, these allegations do not constitute a ground to disqualify the petitioner based on section 68 of the Omnibus Election Code.

To be sure, the petition for disqualification also ascribed other election offenses against the petitioner, particularly section 261 of the Omnibus Election Code, viz:

“Section 261. Prohibited Acts.- The following shall be guilty of an election offense:

(a) Vote-buying and vote-selling.- (1) Any person who gives, offers or promises money or anything of value, gives or promises any office or employment, franchise or grant, public or private, or make or offers to make an expenditure, directly or indirectly, or cause an expenditure to be made to any person, association, corporation, entity or community in order to induce anyone or the public in general, to vote for or against any candidate or withhold his vote in the election, or to vote for or against any aspirant for the nomination or choice of a candidate in a convention or similar selection process of a political party.

x x x x x x x x

(o) Use of public funds, money deposited in trust, equipment, facilities owned or controlled by the government for an election campaign.- Any person who uses under any guise whatsoever directly or indirectly, xxx (3) any equipment, vehicle, facility, apparatus, or paraphernalia owned by the government or by its political subdivisions, agencies including government-owned or controlled corporations, or by the Armed Forces of the Philippines for any election campaign or for any partisan political activity x x x.”

However, the jurisdiction of the COMELEC to disqualify candidates is limited to those enumerated in section 68 of the Omnibus Election Code. All other election offenses are beyond the ambit of COMELEC jurisdiction.[97] They are criminal and not administrative in nature. Pursuant to sections 265 and 268 of the Omnibus Election Code, the power of the COMELEC is confined to the conduct of preliminary investigation on the alleged election offenses for the purpose of prosecuting the alleged offenders before the regular courts of justice, viz:

“Section 265. Prosecution.- The Commission shall, through its duly authorized legal officers, have the exclusive power to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The Commission may avail of the assistance of other prosecuting arms of the government: Provided, however, That in the event that the Commission fails to act on any complaint within four months from his filing, the complainant may file the complaint with the office of the fiscal or with the Ministry of Justice for proper investigation and prosecution, if warranted.

x x x x x x x x

Section 268. Jurisdiction.- The regional trial court shall have the exclusive original jurisdiction to try and decide any criminal action or proceeding for violation of this Code, except those relating to the offense of failure to register or failure to vote which shall be under the jurisdictions of metropolitan or municipal trial courts. From the decision of the courts, appeal will lie as in other criminal cases.”

The COMELEC Second Division grievously erred when it decided the disqualification case based on section 261 (a) and (o), and not on section 68 of the Omnibus Election Code.

(d) Exclusion of the votes in favor of the petitioner and the proclamation of respondent Locsin was done with undue haste.

The COMELEC Second Division ordered the exclusion of the votes cast in favor of the petitioner, and the proclamation of the respondent Locsin, without affording the petitioner the opportunity to challenge the same. In the morning of June 15, 2001, the Provincial Board of Canvassers convened, and on the strength of the said Resolution excluding the votes received by the petitioner, certified that respondent Locsin received the highest number of votes. On this basis, respondent Locsin was proclaimed.

Records reveal that the petitioner received notice of the Resolution of the COMELEC Second Division only through his counsel via a facsimile message in the afternoon of June 15, 2001[98] when everything was already fait accompli. Undoubtedly, he was not able to contest the issuance of the Certificate of Canvass and the proclamation of respondent Locsin. This is plain and simple denial of due process.

The essence of due process is the opportunity to be heard. When a party is deprived of that basic fairness, any decision by any tribunal in prejudice of his rights is void.

Second. The votes cast in favor of the petitioner cannot be considered “stray” and respondent cannot be validly proclaimed on that basis.

The Resolution of the COMELEC Second Division in SPA No. 01-208 contains two dispositions: (1) it ruled that the petitioner was disqualified as a candidate for the position of Congressman of the Fourth District of Leyte; and (2) it ordered the immediate proclamation of the candidate who garnered the highest number of votes, to the exclusion of the respondent [herein petitioner].

As previously stated, the disqualification of the petitioner is null and void for being violative of due process and for want of substantial factual basis. Even assuming, however, that the petitioner was validly disqualified, it is still improper for the COMELEC Second Division to order the immediate exclusion of votes cast for the petitioner as stray, and on this basis, proclaim the respondent as having garnered the next highest number of votes.

- (a) The order of disqualification is not yet final, hence, the votes cast in favor of the petitioner cannot be considered “stray.”

Section 6 of R.A. No. 6646 and section 72 of the Omnibus Election Code require a final judgment before the election for the votes of a disqualified candidate to be considered “stray.” Hence, when a candidate has not yet been disqualified by final judgment during the election day and was voted for, the votes cast in his favor cannot be declared stray. To do so would amount to disenfranchising the electorate in whom sovereignty resides.[99] For in voting for a candidate who has not been disqualified by final judgment during the election day, the people voted for him bona fide, without any intention to misapply their franchise, and in the honest belief that the candidate was then qualified to be the person to whom they would entrust the exercise of the powers of government.[100]

This principle applies with greater force in the case at bar considering that the petitioner has not been declared by final judgment to be disqualified not only before but even after the elections. The Resolution of the COMELEC Second Division disqualifying the petitioner did not attain finality, and hence, could not be executed, because of the timely filing of a Motion for Reconsideration. Section 13, Rule 18 of the COMELEC Rules of Procedure on Finality of Decisions and Resolutions reads:

“Sec. 13. Finality of Decisions or Resolutions.- (a) In ordinary actions, special proceedings, provisional remedies and special reliefs, a decision or resolution of the Commission en banc shall become final and executory after thirty (30) days from its promulgation.

(b) In Special Actions and Special Cases a decision or resolution of the Commission en banc shall become final and executory after five (5) days in Special Actions and Special Cases and after fifteen (15) days in all other proceedings, following their promulgation.

(c) Unless a motion for reconsideration is seasonably filed, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days in Special Actions and Special Cases and after fifteen (15) days in all other actions or proceedings, following its promulgation.” (emphasis supplied)

In this wise, COMELEC Resolution No. 4116,[101] issued in relation to the finality of resolutions or decisions in disqualification cases, provides:

“This pertains to the finality of decisions or resolutions of the Commission en banc or division, particularly on Special Actions (Disqualification Cases).

Special Action cases refer to the following:

- (a) Petition to deny due course to a certificate of candidacy;
- (b) Petition to declare a candidate as a nuisance candidate;
- (c) Petition to disqualify a candidate; and
- (d) Petition to postpone or suspend an election.

Considering the foregoing and in order to guide field officials on the finality of decisions or resolutions on special action cases (disqualification cases) the Commission, **RESOLVES**, as it is hereby **RESOLVED**, as follows:

- (1) the decision or resolution of the En Banc of the Commission on disqualification cases shall become final and executory after five (5) days from its promulgation unless restrained by the Supreme Court;
- (2) the decision or resolution of a Division on disqualification cases shall become final and executory after the lapse of five (5) days unless a motion for reconsideration is seasonably filed;
- (3) where the ground for disqualification case is by reason of non-residence, citizenship, violation of election laws and other analogous cases and on the day of the election the resolution has not become final and

executory the BEI shall tally and count the votes for such disqualified candidate;

(4) the decision or resolution of the En Banc on nuisance candidates, particularly whether the nuisance candidate has the same name as the bona fide candidate shall be immediately executory;

(5) the decision or resolution of a DIVISION on nuisance candidate, particularly where the nuisance candidate has the same name as the bona fide candidate shall be immediately executory after the lapse of five (5) days unless a motion for reconsideration is seasonably filed. In which case, the votes cast shall not be considered stray but shall be counted and tallied for the bona fide candidate.

All resolutions, orders and rules inconsistent herewith are hereby modified or repealed.”

Considering the timely filing of a Motion for Reconsideration, the COMELEC Second Division gravely abused its discretion in ordering the immediate disqualification of the petitioner and ordering the exclusion of the votes cast in his favor. Section 2, Rule 19 of the COMELEC Rules of Procedure is very clear that a timely Motion for Reconsideration shall suspend the execution or implementation of the resolution, viz:

Section 2. Period for filing Motion for Reconsideration.- A motion to reconsider a decision, resolution, order, or ruling of a Division shall be filed within five (5) days from the promulgation thereof. Such motion, if not pro forma, suspends the execution or implementation of the decision, resolution, order or ruling.” (emphases supplied)

(b) Respondent Locsin, as a mere second placer, cannot be proclaimed.

More brazen is the proclamation of respondent Locsin which violates the settled doctrine that the candidate who obtains the second highest number of votes may not be proclaimed winner in case the winning candidate is disqualified.[102] In every election, the people’s choice is the paramount consideration and their expressed will must at all times be given effect. When the majority speaks and elects into office a candidate by giving him the highest number of votes cast in the election for the office, no one can be declared elected in his place.[103] In *Domino v. COMELEC*,[104] this Court ruled, viz:

“It would be extremely repugnant to the basic concept of the constitutionally guaranteed right to suffrage if a candidate who has not acquired the majority or plurality of votes is proclaimed winner and imposed as representative of a constituency, the majority of which have positively declared through their ballots that they do not choose him. To simplistically assume that the second placer would have received that (sic) other votes would be to substitute our judgment for the mind of the voters. He could not be considered the first among the qualified candidates because in a field which excludes the qualified candidate, the conditions would have substantially changed.

x x x x x x x x

The effect of a decision declaring a person ineligible to hold an office is only that the election fails entirely, that the wreath of victory cannot be transferred from the disqualified winner to the repudiated loser because the law then as now only authorizes a declaration in favor of the person who has obtained a plurality of votes, and does not entitle the candidate receiving the next highest number of votes to be declared elected. In such case, the electors have failed to make a choice and the election is a nullity. To allow the defeated and repudiated candidate to take over the elective position despite his rejection by the electorate is to disenfranchise the electorate without any fault on their part and to undermine the importance and meaning of democracy and the people’s right to elect officials of their choice.”[105]

Respondent Locsin proffers a distinction between a disqualification based on personal circumstances such as age, residence or citizenship and disqualification based on election offenses. She contends that the election of candidates later disqualified based on election offenses like those enumerated in section 68 of the Omnibus

Election Code should be invalidated because they violate the very essence of suffrage and as such, the votes cast in his favor should not be considered.[106]

This contention is without merit. In the recent case of *Trinidad v. COMELEC*,[107] this Court ruled that the effect of a judgment disqualifying a candidate, after winning the election, based on personal circumstances or section 68 of the Omnibus Election Code is the same: the second placer could not take the place of the disqualified winner.

II

Whether the proclamation of respondent Locsin divested the COMELEC en banc of jurisdiction to review its validity.

Respondent Locsin submits that the COMELEC en banc has no jurisdiction to annul her proclamation. She maintains that the COMELEC en banc was been divested of jurisdiction to review the validity of her proclamation because she has become a member of the House of Representatives. Thus, she contends that the proper forum to question her membership to the House of Representatives is the House of Representative Electoral Tribunal (HRET).

We find no merit in these contentions.

First. The validity of the respondent's proclamation was a core issue in the Motion for Reconsideration seasonably filed by the petitioner.

In his timely Motion for Reconsideration with the COMELEC en banc, petitioner argued that the COMELEC Second Division erred thus:

“(1) in disqualifying petitioner on the basis solely of the dubious declaration of the witnesses for respondent Locsin;

(2) in adopting in toto the allegations of the witnesses for respondent Locsin; and

(3) in promulgating the resolution in violation of its own rules of procedure and in directing therein the immediate proclamation of the second highest ‘vote getter.’” (emphases supplied)

In support of his third assignment of error, petitioner argued that “the Second Division’s directive for the immediate proclamation of the second highest vote-getter is premature considering that the Resolution has yet to become final and executory.”[108] Clearly, the validity of respondent Locsin’s proclamation was made a central issue in the Motion for Reconsideration seasonably filed by the petitioner. Without doubt, the COMELEC en banc has the jurisdiction to rule on the issue.

The fact that the Petition for Nullity of Proclamation was filed directly with the COMELEC en banc is of no moment. Even without said Petition, the COMELEC en banc could still rule on the nullity of respondent’s proclamation because it was properly raised in the Motion for Reconsideration.

Section 3, Article IX-C of the 1987 Constitution empowers the COMELEC en banc to review, on motion for reconsideration, decisions or resolutions decided by a division, viz:

“Sec. 3. The Commission on Elections may sit en banc or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decision shall be decided by the Commission en banc.”

Pursuant to this Constitutional mandate, the COMELEC Rules of Procedure provides:

“Rule 19. Motions for Reconsideration.-

Section 1. Grounds for Motion for Reconsideration.- A motion for reconsideration may be filed on the grounds that the evidence is insufficient to justify the decision, order or ruling, or that the said decision, order or ruling is contrary to law.

Section 2. Period for filing Motion for Reconsideration.- A motion to reconsider a decision, resolution, order, or ruling of a Division shall be filed within five (5) days from the promulgation thereof. Such motion, if not pro forma, suspends the execution or implementation of the decision, resolution, order or ruling.”

Section 3. Form and Contents of Motion for Reconsideration.- The motion shall be verified and shall point out specifically the findings or conclusions of the decision, resolution, order or ruling which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or resolutions.

Section 4. Effect of Motion for Reconsideration on Period to Appeal.- A motion to reconsider a decision, resolution, order or ruling when not pro forma, suspends the running of the period to elevate the matter to the Supreme Court.

Section 5. How Motion for Reconsideration Disposed Of.- Upon the filing of a motion to reconsider a decision, resolution, order or ruling of a Division, the Clerk of Court concerned shall, within twenty-four (24) hours from the filing thereof, notify the Presiding Commissioner. The latter shall within two (2) days thereafter certify the case to the Commission en banc.

Section 6. Duty of the Clerk of Court of the Commission to set Motion for Hearing.- The Clerk of Court concerned shall calendar the motion for reconsideration for the resolution of the Commission en banc within ten (10) days from the certification thereof.” (emphases supplied)

Since the petitioner seasonably filed a Motion for Reconsideration of the Order of the Second Division suspending his proclamation and disqualifying him, the COMELEC en banc was not divested of its jurisdiction to review the validity of the said Order of the Second Division. The said Order of the Second Division was yet unenforceable as it has not attained finality; the timely filing of the motion for reconsideration suspends its execution. It cannot, thus, be used as the basis for the assumption in office of the respondent as the duly elected Representative of the 4th legislative district of Leyte.

Second. It is the House of Representatives Electoral Tribunal (HRET) which has no jurisdiction in the instant case.

Respondent contends that having been proclaimed and having taken oath as representative of the 4th legislative district of Leyte, any question relative to her election and eligibility should be brought before the HRET pursuant to section 17 of Article VI of the 1987 Constitution.[109]

We reject respondent’s contention.

(a) The issue on the validity of the Resolution of the COMELEC Second Division has not yet been resolved by the COMELEC en banc.

To stress again, at the time of the proclamation of respondent Locsin, the validity of the Resolution of the COMELEC Second Division was seasonably challenged by the petitioner in his Motion for Reconsideration. The issue was still within the exclusive jurisdiction of the COMELEC en banc to resolve. Hence, the HRET cannot assume jurisdiction over the matter.

In *Puzon vs. Cua*,[110] even the HRET ruled that the “doctrinal ruling that once a proclamation has been made and a candidate-elect has assumed office, it is this Tribunal that has jurisdiction over an election contest involving

members of the House of Representatives, could not have been immediately applicable due to the issue regarding the validity of the very COMELEC pronouncements themselves.” This is because the HRET has no jurisdiction to review resolutions or decisions of the COMELEC, whether issued by a division or en banc.

(b) The instant case does not involve the election and qualification of respondent Locsin.

Respondent Locsin maintains that the proper recourse of the petitioner is to file a petition for quo warranto with the HRET.

A petition for quo warranto may be filed only on the grounds of ineligibility and disloyalty to the Republic of the Philippines.[111] In the case at bar, neither the eligibility of the respondent Locsin nor her loyalty to the Republic of the Philippines is in question. There is no issue that she was qualified to run, and if she won, to assume office.

A petition for quo warranto in the HRET is directed against one who has been duly elected and proclaimed for having obtained the highest number of votes but whose eligibility is in question at the time of such proclamation. It is evident that respondent Locsin cannot be the subject of quo warranto proceeding in the HRET. She lost the elections to the petitioner by a wide margin. Her proclamation was a patent nullity. Her premature assumption to office as Representative of the 4th legislative district of Leyte was void from the beginning. It is the height of absurdity for the respondent, as a loser, to tell petitioner Codilla, Sr., the winner, to unseat her via a quo warranto proceeding.

III

Whether it is the ministerial duty of the public respondents to recognize petitioner Codilla, Sr. as the legally elected Representative of the 4th legislative district of Leyte vice respondent Locsin.

Under Rule 65, section 3 of the 1997 Rules of Civil Procedure, any person may file a verified petition for mandamus “when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law.”[112] For a petition for mandamus to prosper, it must be shown that the subject of the petition for mandamus is a ministerial act or duty, and not purely discretionary on the part of the board, officer or person, and that the petitioner has a well-defined, clear and certain right to warrant the grant thereof.

The distinction between a ministerial and discretionary act is well delineated. A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment.[113]

In the case at bar, the administration of oath and the registration of the petitioner in the Roll of Members of the House of Representatives representing the 4th legislative district of Leyte is no longer a matter of discretion on the part of the public respondents. The facts are settled and beyond dispute: petitioner garnered 71,350 votes as against respondent Locsin who only got 53, 447 votes in the May 14, 2001 elections. The COMELEC Second Division initially ordered the proclamation of respondent Locsin; on Motion for Reconsideration the COMELEC en banc set aside the order of its Second Division and ordered the proclamation of the petitioner. The Decision of the COMELEC en banc has not been challenged before this Court by respondent Locsin and said Decision has

become final and executory.

In sum, the issue of who is the rightful Representative of the 4th legislative district of Leyte has been finally settled by the COMELEC en banc, the constitutional body with jurisdiction on the matter. The rule of law demands that its Decision be obeyed by all officials of the land. There is no alternative to the rule of law except the reign of chaos and confusion.

IN VIEW WHEREOF, the Petition for Mandamus is granted. Public Speaker of the House of Representatives shall administer the oath of petitioner EUFROCINO M. CODILLA, SR., as the duly-elected Representative of the 4th legislative district of Leyte. Public respondent Secretary-General shall likewise register the name of the petitioner in the Roll of Members of the House of Representatives after he has taken his oath of office. This decision shall be immediately executory.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., and Azcuna, JJ., concur.
Carpio, J., no part.

[1] Records, SPA No. 01-208, vol. I, pp. 1-7.

[2] Id., Annex “A-1,” p. 8.

[3] Id., Annex “A-2,” p. 9.

[4] Id., Annex “A-4,” p. 11.

[5] Id., Annex “A-3,” p. 10.

[6] Id., Annexes “A-5” to “A-6,” pp. 12-13.

[7] Id., Annexes “B-1” to “B-5,” pp. 14-18.

[8] Id., p. 23.

[9] Id., p. 21.

[10] Id., pp. 24-26. From the Records, it appears that respondent Locsin did not file a separate Motion for Intervention.

[11] Id., p. 26.

[12] Id., Registry Receipt No. 78660, p. 30.

[13] Id., pp. 36-40.

[14] Id., p. 39.

[15] Id., pp. 39-40.

[16] Id., p. 234.

[17] Id., pp. 74-79.

- [18] Id., Annex “1,” pp. 80-81.
- [19] Id., Annex “1-A,” p. 82.
- [20] Id., Annex “2,” pp. 83-84.
- [21] Id., Annex “2-A,” pp. 122-123.
- [22] Id., Annex “3,” pp. 124-125.
- [23] Id., pp. 41-46.
- [24] Id., p. 47.
- [25] Id., p. 71.
- [26] Id., pp. 211-233.
- [27] Id., Annex “4,” p. 281.
- [28] Id., Annex “6,” p. 283.
- [29] Id., Annex “7,” p. 284.
- [30] Id., Annex “8,” pp. 285-286.
- [31] Id., Annex “9,” p. 287.
- [32] Id., Annex “10,” p. 288.
- [33] Id., Annex “11,” p. 421.
- [34] Id., pp. 92-93.
- [35] Records, SPA No. 01-208, vol II, pp. 6-20.
- [36] Id., Annexes “B” and “C”, pp. 57-76.
- [37] Id., Annex “D-1”, p. 138.
- [38] Id., pp. 23-41.
- [39] Id., p. 87.
- [40] Id., pp. 174-192.
- [41] Records, SPC No. 01-324, pp. 1-14.
- [42] Records, SPA No. 01-208, vol. II, pp. 163-165.
- [43] Id., pp. 166-173. Annex “A” contains the Affidavits of Edgardo Apuya, Carmelita Manongsong, Danilo Pingoy, Rolando Viovicente, and Samuel Antipuesto; Annex “B” includes the Affidavits of Samuel Antipuesto, Pastora Capuyan and Feliciano Apuya; Annex “C” consists of Affidavits of Agripino Beltran, Taciana Beltran, Samuel Antipuesto, Buenaventura Tasan, Rustico Alogbate, Pastora Capuyan, Feliciano Apuya, Ellen Pingoy and Joel Ranolas; Annex “D” contains the Affidavits of Noel Gomez and Jovito Laurente; and Annex “E” contains the Affidavit of Roman Domasin.
- [44] Records, SPC No. 01-324, pp. 108-115.

[45] *Id.*, pp. 43-163.

[46] *Id.*, pp. 212-219.

[47] Petition, Annex B-2; Rollo, pp. 149-159.

[48] Petition, Annexes B-4 and B-5; Rollo, pp. 162-179.

[49] Rollo, pp. 40-44.

[50] Petition, Annex B; Rollo, pp. 40-146.

[51] *Id.*, Annex B-1; *id.*, pp. 147-148.

[52] Rollo, pp. 323-337.

[53] Memorandum dated August 31, 2001; Rollo, pp. 403-407.

[54] Petition, Annex D-1; Rollo, pp. 216-225.

[55] *Id.*, Annex E; *id.*, pp. 226-233.

[56] *Id.*, Annex A; *id.*, p. 34.

[57] *Id.*, Annex A-5; *id.*, p. 39.

[58] *Id.*, Annex F; *id.*, pp. 234-242.

[59] *Id.*, Annex H-1; *id.*, pp. 245-249.

[60] *Id.*, Annex G; *id.*, p. 243.

[61] *Id.*, Annex I; *id.*, pp. 250-255.

[62] *Id.*, Annex J; *id.*, pp. 256-257.

[63] Rollo, pp. 281-287.

[64] *Id.*, pp. 382-401.

[65] The first Memorandum of Chief Counsel Palicte III dated July 22, 2001 was issued at the instance of Secretary General Nazareno on the basis of a Memorandum issued by COMELEC Chairman Benipayo ordering the investigation of the Provincial Board of Canvassers and the Provincial Election Supervisor of Leyte in connection with the proclamation of respondent Locsin, *id.*, pp. 408-412. A second Memorandum reiterating his previous opinion was issued on August 31, 2001 pursuant to a request made by respondent Locsin relative to the COMELEC En Banc Resolution of August 29, 2001, *id.*, pp. 403-407.

[66] Rollo, pp. 288-348.

[67] Resolution dated October 18, 2001, HRET Case No. 01-043; Annex 5, Comment of Respondent Locsin; Rollo, pp. 377-379.

[68] Rollo, pp. 426-454.

[69] Omnibus Election Code of the Philippines, December 3, 1985.

[70] Rules Delegating to COMELEC Field Officials the Hearing and Reception of Evidence of Disqualification Cases Filed in Connection with the May 14, 2001 National and Local Elections, December 15, 2000.

[71] See petitioner's Answer, Records, SPA No. 01-208, vol. I, p. 74; Motion to Lift Suspension of Proclamation, id., p. 42; Memorandum, id., p. 343; Motion for Reconsideration, id., vol. II, p. 24.

[72] Records, SPA No. 01-208, vol. I, p. 26. [73] The Electoral Reform Law of 1987, January 5, 1988.

[74] Cledera vs. Sarmiento, 39 SCRA 562 (1971); Andra v. CA, 60 SCRA 379 (1979); Sembrano v. Ramirez, 166 SCRA 30 (1988).

[75] Records, SPA No. 01-208, vol. I, p. 27.

[76] Id., p. 30, Registry Receipt No. 78660.

[77] Id., pp. 36-40.

[78] Rollo, p. 89.

[79] Records, SPA No. 01-208, vol. I, pp. 214-228.

[80] Id., pp. 229-231.

[81] Rollo, p. 89.

[82] Id., pp. 95-102.

[83] Records, SPA No. 01-208, vol. I, p. 3.

[84] Id., p. 11.

[85] Id., p. 10.

[86] Id., p. 9.

[87] Id., p. 8.

[88] Id., p. 304.

[89] Id., p. 306

[90] Id., p. 307.

[91] Id., p. 310.

[92] Id., p. 312.

[93] Id., p. 313.

[94] Id., p. 318.

[95] Id., p. 319.

[96] See Affidavits of Arnel Surillo, id., p. 308; Tolentino Denoy, id., p. 314; Jerome Ychon, id., p. 315; Benjamin Aparis, id., p. 316; and Rene Maurecio, id., p. 317.

[97] Rule 34 of the COMELEC Rules of Procedure states: "Section 1. Authority of the Commission to Prosecute Election Offenses.- The Commission shall have the exclusive power to conduct preliminary investigation of all election offenses punishable under the election laws and to prosecute the same, except as may otherwise be provided by law."

[98] Copy of the facsimile message was attached to the petitioner's Motion for Reconsideration. See Records,

SPA No. 01-208, vol. II, p. 57-76.

[99] Labo v. COMELEC, 176 SCRA 1 (1989).

[100] Reyes v. COMELEC, 254 SCRA 514 (1996); Nolasco v. COMELEC, 275 SCRA 762 (1997).

[101] May 7, 2001.

[102] Labo v. COMELEC, supra; Abella v. COMELEC, 201 SCRA 253 (1991); Aquino v. COMELEC, supra.

[103] Benito v. COMELEC, 235 SCRA 546 (1994).

[104] 310 SCRA 546 (1999).

[105] Id., pp. 573-574 (citations omitted).

[106] Records, SPA No. 01-208, vol. II, p. 87.

[107] 315 SCRA 175 (1999).

[108] Records, SPA No. 01-208, vol. II, p. 37.

[109] “The Senate and the House of Representatives shall have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns and qualifications of their respective members.”

[110] HRET Case No. 42, July 25, 1988, 1 HRET 32-33.

[111] Rule 17, Revised Rules of HRET provides: “Quo Warranto.- A verified petition for quo warranto contesting the election of a Member of the House of Representatives shall be filed by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten (10) days after the proclamation of the winner.”

[112] Section 3 of Rule 65, 1997 Rules of Civil Procedure.

[113] Samson v. Barrios, 63 Phil. 198 (1936); Lemi v. Valencia, 26 SCRA 203 (1968); Meralco Securities Corp. v. Savellano, et al., 177 SCRA 804 (1982), as cited in I Regalado, Remedial Law Compendium 714 (1997).

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