

**EDUARDO T. SAYA-ANG, SR., AND RICARDO T. LARA, PETITIONERS,
VS. HON. COMMISSION ON ELECTIONS, HONORABLE PIO JOSE S.
JOSON, HONORABLE JOSE P. BALBUENA, HONORABLE LIRIO T.
JOQUINO...**

G.R. No. 155087. November 28, 2003

Ponente: AZCUNA, J.

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AZCUNA, J.:

Petitioners herein, Eduardo T. Saya-ang, Sr. and Ricardo T. Lara, were candidates for the Office of Barangay Captain of Barangays Congan and New Aklan respectively for the July 15, 2002 Synchronized Sangguniang Kabataan (SK) and Barangay Elections. Petitioner Saya-ang filed his certificate of candidacy in Barangay Congan on June 6, 2002. On the other hand, petitioner Lara filed his own certificate of candidacy in Barangay New Aklan on June 8, 2002. On July 19, 2002, a letter-report was submitted by Acting Election Officer Alim to the Law Department of the Comelec which stated that petitioners herein are not residents of the barangays they wish to be elected in. In turn, the Law Department of the Commission on Elections (Comelec) submitted its study to the Comelec en banc on July 9, 2002 recommending the denial of due course to the certificates of candidacy of petitioners. On the day of the elections or on July 15, 2002, the Comelec, issued En Banc Resolution No. 5393, which essentially denied due course to the certificates of candidacy of petitioners herein.

The pertinent portion of the assailed Resolution states:

Considering the foregoing, the Commission RESOLVED, as it hereby RESOLVES, to approve the recommendation of the Law Department as follows:

- To deny due course to the Certificates of Candidacy of Romeo P. Sumayog, Sandigan Damie, James Ceasar I. Young, Eduardo T. Saya-ang, Sr., and Ricardo L. Lara; and
- To direct the Election Officer of Glan, Sarangani to delete their names from the Certified List of Candidates for Barangay Kagawad and Punong Barangay of Barangays E. Alegado, Baliton, Cross, Congan, and New Aklan, respectively.

Without prejudice to the filing of criminal cases against them as the evidence so warrants under the circumstances.

Let the Law Department implement this resolution.

SO ORDERED.

Despite the abovementioned Resolution, petitioners were still proclaimed as winners on July 16, 2002, having garnered the most number of votes in their respective barangays. On July 31, 2002, petitioners took their oath of office before Alfredo L. Barcelona, Jr., the First Assistant Provincial Prosecutor of Sarangani Province.

On August 9, 2002, Pio Jose S. Joson, Deputy Executive Director for Operations of the Comelec, issued a

Memorandum for all Regional Election Directors, Provincial Election Supervisors and City/Municipal Election Officers. This memorandum directed all election officers to delete the names of those candidates whose certificates of candidacy were denied due course despite the fact that said denial did not arrive on time. It also ordered the candidates concerned to desist from taking their oaths and from assuming the positions to which they have been elected, unless the Supreme Court issued a temporary restraining order. Lastly, the said memorandum ordered the Board of Canvassers to reconvene for the purpose of proclaiming the duly-elected candidates and correcting the certificates of canvass and proclamation.

On August 10, 2002, the Comelec en banc promulgated Resolution No. 5584, entitled "In the Matter of the Policy of the Commission on Proclaimed Candidates Found to be Ineligible for Being Not Registered Voters in the Place Where They Were Elected and on the Failure/ Omission of the Board of Canvassers to Include Certain Election Returns in the Canvass." [1]

On August 14, 2002, Acting Election Officer Alim, invoking and acting pursuant to Comelec Resolution No. 5393 and Resolution No. 5584, issued a directive commanding petitioners to cease and desist from taking their oath of office and from assuming the position to which they were elected. He also directed the Barangay Board of Canvassers for Barangays Congan and New Aklan to reconvene immediately and proclaim the duly-elected candidates and to correct the certificates of canvass and proclamation.

Petitioners received the aforementioned directive on August 19, 2002. On August 21, 2002, the Comelec en banc promulgated Resolution No. 5666 amending its Resolution No. 5584 on the basis of the approved recommendations of Commissioner Sadain. Pertinent portions of the amended resolution state:

I.
ON PROCLAIMED CANDIDATES FOUND TO BE INELIGIBLE FOR BEING NOT REGISTERED
VOTERS IN THE PLACE WHERE THEY WERE ELECTED

x x x

(d)

For both (a) and (b), in the event that the disqualified candidate is proclaimed the winner despite his disqualification or despite the pending disqualification case filed before his proclamation, but which is subsequently resolved against him, the proclamation of said disqualified candidate is hereby declared void from the beginning, with notice to the candidate concerned, even if the dispositive portion of the resolution disqualifying him or cancelling his certificate of candidacy does not provide for such an annulment.[2]

On September 4, 2002, Acting Election Officer Alim, using as his basis Comelec en banc Resolution No. 5666 issued a memorandum directing the Board of Canvassers of Barangay Congan, Glan, Sarangani Province to reconvene at his office on September 13, 2002.

Hence, the instant petition anchored on the sole assignment of error:

THAT THE PROMULGATION OF THE EN BANC RESOLUTION NO. 5393, DATED 15 JULY 2002, BY RESPONDENT HONORABLE COMMISSION ON ELECTIONS IS PATENTLY ERRONEOUS BEING WITHOUT BASIS IN FACT AND IN LAW AND THE ISSUANCE OF WHICH IS IN GRAVE ABUSE OF DISCRETION AMOUNTING EVEN AS IT DOES TO LACK OR EXCESS OF JURISDICTION.[3]

At the very outset, it must be made clear that the Comelec has jurisdiction to deny due course to or cancel a certificate of candidacy.[4] Such jurisdiction continues even after the elections, if for any reason no final judgment of disqualification is rendered before the elections, and the candidate facing disqualification is voted for and receives the highest number of votes, and provided further that the winning candidate has not been

proclaimed or taken his oath of office. [5] Furthermore, a decision by the Comelec to disqualify a candidate shall become final and executory only after a period of five days:

Sec. 3. Decisions After Five Days.--- Decisions in pre- proclamation cases and petitions to deny due course to or cancel certificates of candidacy, to declare a candidate as nuisance candidate or to disqualify a candidate, and to postpone or suspend elections shall become final and executory after the lapse of five (5) days from their promulgation, unless restrained by the Supreme Court.[6]

In the present case, the assailed Resolution denying due course to petitioners' certificates of candidacy was promulgated on June 15, 2002, or on the very day of the elections. On that day, therefore, the decision of the Comelec had not yet become final and executory since petitioners still had until June 20, 2002 to file their motion for reconsideration. The Barangay Board of Canvassers rightly retained petitioners' names in the list of qualified candidates and could not be faulted from counting the votes cast in favor of the petitioners. Petitioners were, therefore, validly proclaimed as winners of the elections on June 16, 2002, having garnered the most number of votes. On the day of the elections or on June 15, 2002, petitioners, for all intents and purposes, were still in the running. The Resolution of respondent Comelec ordering their names to be deleted from the list of qualified candidates only became final and executory on June 20, 2002, or five days from the promulgation thereof.

Petitioners also maintain that they were never served a copy of the assailed Resolution and were never given the chance to present their evidence. They claim that they only knew about Resolution 5393 on August 19, 2002, when they were served a copy of the directive issued by Acting Election Officer Alim ordering them to cease and desist from taking their oath of office and from assuming the position to which they are elected. This allegation was not disproved by respondent Comelec. Instead, it cites Resolution No. 4801, which was published in the Manila Standard and Manila Bulletin on May 25, 2002, wherein it was stated that the administrative inquiry of the Comelec on the eligibility of candidates starts from the time they filed their certificates of candidacy. The Comelec maintains, therefore, that by virtue of the said resolution, all candidates are deemed to have constructive notice of any administrative inquiry against them. Also, it asserts that by virtue of its administrative powers, it may *motu proprio* deny or cancel, without any kind of hearing whatsoever, the certificates of candidacy of those who are found not to be registered voters in the place where they seek to run for public office.

It is clear, however, that under Section 3, Rule 23 of the Comelec Rules of Procedure, a petition to cancel a certificate of candidacy shall be heard summarily after due notice. The same rules also provide that when the proceedings are authorized to be summary, in lieu of oral testimonies, the parties may, after due notice, be required to submit their position papers together with affidavits, counter-affidavits and other documentary evidence; and when there is a need for clarification of certain matters, at the discretion of the Commission en banc or the Division, the parties may be allowed to cross-examine the affiants.[7]

The rules providing for the abovementioned summary hearing were mandated to accord due process of law to candidates during elections. The right to due process is a cardinal and primary right which must be respected in all proceedings.[8] It is the embodiment of the sporting idea of fair play,[9] the cornerstone of every democratic society. In any proceeding, the essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard.[10] Respondent Comelec's argument that petitioners have already been constructively notified of the inquiry against them cannot be given merit. Petitioners herein were not even informed of the administrative inquiry against them, nor were they called upon to adduce their own evidence and to meet and refute the evidence against them. Petitioners certainly cannot read the minds of those tasked to look into their certificates of candidacy, nor did they have any way of knowing that a proceeding had already been instituted against them and that they were entitled to present evidence on their behalf.

Finally, the Court notes again that petitioners have already been proclaimed as the winners in the elections. They

have already taken their oaths of office and are, at present, serving their constituents in their respective barangays. In *Lambonao v. Tero*,^[11] the Court held that defects in the certificates of candidacy should have been questioned on or before the election and not after the will of the people has been expressed through the ballots. It was further held in the said case that while provisions relating to certificates of candidacy are mandatory in terms, it is an established rule of interpretation as regards election laws, that mandatory provisions requiring certain steps before elections will be construed as directory after the elections, to give effect to the will of the electorate. The rationale for this principle was explained in *Lino Luna v. Rodriguez*,^[12] where the Court said that these various and numerous provisions were adopted to assist the voters in their participation in the affairs of the government and not to defeat that object. When voters have honestly cast their ballots, the same should not be nullified simply because the officers tasked under the law to direct the elections and guard the purity of the ballot did not do their duty.

WHEREFORE, the instant petition is GRANTED. Resolution No. 5393 of the respondent Commission on Elections en banc is SET ASIDE. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., and Tinga, JJ., concur.

[1] Annex "B-4" of Petition; Rollo, pp. 38-49.

[2] Annex "C-1" of Petition; Rollo, pp. 51-54.

[3] Petition, p. 15; rollo, p. 20.

[4] Section 78, Article IX of the Omnibus Election Code.

[5] *Juan Domino v. Comelec, et. al.*, 310 SCRA 549, 571 (1999).

[6] Section 3, Rule 39, Part VII, Comelec Rules of Procedure.

[7] Section 3, Rule 17, Comelec Rules of Procedure.

[8] *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635 (1940).

[9] *Isagani A. Cruz*, Constitutional Law, p. 95 citing *Frankfurter, Mr. Justice Holmes and the Supreme Court*, pp. 32-33.

[10] *Fabella v. Court of Appeals*, 282 SCRA 256, 269 (1997) citing *Bernas, Joaquin G., The 1987 Constitution of the Republic of the Philippines: A Commentary*, p. 108 (1996).

[11] 15 SCRA 716, 719 (1965) citing *De Guzman v. Board of Canvassers and Lucero*, 48 Phil. 211, 215-216.

[12] 39 Phil. 208.

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