

**HENRY P. LANOT, SUBSTITUTED BY MARIO S. RAYMUNDO,
PETITIONER, CHARMIE Q. BENAVIDES, PETITIONER-INTERVENOR,
VS. COMMISSION ON ELECTIONS AND VICENTE P. EUSEBIO,
RESPONDENTS.**

G.R. NO. 164858. November 16, 2006

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CARPIO, J.:

The Case

This is a petition for certiorari[1] assailing the Resolution dated 20

August 2004,[2] the Resolution dated 21 May 2004[3] of the Commission on Elections (COMELEC) En Banc, and the Advisory dated 10 May 2004[4] of COMELEC Chairman Benjamin S. Abalos ("Chairman Abalos") in SPA No. 04-288.

The 10 May 2004 Advisory of Chairman Abalos enjoined Acting National Capital Region (NCR) Regional Director Esmeralda Amora-Ladra ("Director Ladra") from implementing the COMELEC First Division's 5 May 2004 Resolution.[5] The 5 May 2004 Resolution ordered (1) the disqualification of respondent Vicente P. Eusebio ("Eusebio") as a candidate for Pasig City Mayor in the 10 May 2004 elections, (2) the deletion of Eusebio's name from the certified list of candidates for Pasig City Mayor, (3) the consideration of votes for Eusebio as stray, (4) the non-inclusion of votes for Eusebio in the canvass, and (5) the filing of the necessary information against Eusebio by the COMELEC Law Department.

The 21 May 2004 Order of the COMELEC En Banc set aside the 11 May 2004 Order of the COMELEC En Banc[6] and directed the Pasig City Board of Canvassers to proclaim the winning candidate for Pasig City Mayor without prejudice to the final outcome of Eusebio's disqualification case. The 11 May 2004 Order suspended the proclamation of Eusebio in the event that he would receive the winning number of votes.

Finally, the 20 August 2004 COMELEC En Banc resolution set aside the 5 May 2004 Resolution of the COMELEC First Division[7] and nullified the corresponding order. The COMELEC En Banc referred the case to the COMELEC Law Department to determine whether Eusebio actually committed the acts subject of the petition for disqualification.

The Facts

On 19 March 2004, Henry P. Lanot ("Lanot"), Vener Obispo ("Obispo"), Roberto Peralta ("Peralta"), Reynaldo dela Paz ("dela Paz"), Edilberto Yamat ("Yamat"), and Ram Alan Cruz ("Cruz") (collectively, "petitioners"), filed a petition for disqualification[8] under Sections 68 and 80 of the Omnibus Election Code against Eusebio before the COMELEC. Lanot, Obispo, and Eusebio were candidates for Pasig City Mayor, while Peralta, dela Paz, Yamat, and Cruz were candidates for Pasig City Councilor in the 10 May 2004 elections. The case was docketed as SPA (NCR-RED) No. C04-008.

Petitioners alleged that Eusebio engaged in an election campaign in various forms on various occasions outside of the designated campaign period, such as (1) addressing a large group of people during a medical mission sponsored by the Pasig City government; (2) uttering defamatory statements against Lanot; (3) causing the publication of a press release predicting his victory; (4) installing billboards, streamers, posters, and stickers printed with his surname across Pasig City; and (5) distributing shoes to schoolchildren in Pasig public schools to induce their parents to vote for him.

In his Answer filed on 29 March 2004,[9] Eusebio denied petitioners' allegations and branded the petition as a harassment case. Eusebio further stated that petitioners' evidence are merely fabricated.

Director Ladra conducted hearings on 2, 5 and 7 April 2004 where she received the parties' documentary and testimonial evidence. Petitioners submitted their memorandum[10] on 15 April 2004, while Eusebio submitted his memorandum[11] on 16 April 2004.

The Ruling of the Regional Director

On 4 May 2004, Director Ladra submitted her findings and recommendations to the COMELEC. Director Ladra recommended that:

WHEREFORE, in view of the foregoing, undersigned respectfully recommends that the instant petition be GRANTED. Consequently, pursuant to Section 68 (a) and (e) of the Omnibus Election Code, respondent VICENTE P. EUSEBIO shall be DISQUALIFIED to run for the position of Mayor, Pasig City for violation of Section 80 of the Omnibus Election Code.

Further, undersigned respectfully recommends that the instant case be referred to the Law Department for it to conduct a preliminary investigation on the possible violation by the respondent of Sec. 261 (a) of the Omnibus Election Code.[12]

The Ruling of the COMELEC

In a resolution dated 5 May 2004, or five days before the elections, the COMELEC First Division adopted the findings and recommendation of Director Ladra. The dispositive portion of the resolution read:

WHEREFORE, in view of the foregoing, the Commission (FIRST DIVISION) RESOLVED as it hereby RESOLVES to ORDER:

- the disqualification of respondent VICENTE P. EUSEBIO from being a candidate for mayor of Pasig City in the May 10, 2004 elections;
- the Election Officers of District I and District II of Pasig City to DELETE and CANCEL the name of respondent VICENTE P. EUSEBIO from the certified list of candidates for the City Offices of Pasig City for the May 10, 2004 elections;
- the Board of Election Inspectors of all the precincts comprising the City of Pasig not to count the votes cast for respondent VICENTE EUSEBIO, the same being cast for a disqualified candidate and therefore must be considered stray;
- the City Board of Canvassers of Pasig City not to canvass the votes erroneously cast for the disqualified candidate respondent VICENTE P. EUSEBIO, in the event that such votes were recorded in the election returns[;]
- the Regional Director of NCR, and the Election Officers of Pasig City to immediately implement the foregoing directives[;]
- the Law Department through its Director IV, Atty. ALIODEN DALAIG to file the necessary information

against Vicente P. Eusebio before the appropriate court.

This Resolution is immediately executory unless restrained by the Commission En Banc.[13] (Emphasis in the original)

In a Very Urgent Advisory[14] dated 8 May 2004, or two days before the elections, Chairman Abalos informed the following election officers of the resolution of the COMELEC First Division: Director Ladra; Atty. Romeo Alcazar, Acting Election Officer of the First District of Pasig City; Ms. Marina Gerona, Acting Election Officer of the Second District of Pasig City; and all Chairmen and Members of the Board of Election Inspectors and City Board of Canvassers of Pasig City (collectively, "pertinent election officers"). Director Ladra repeated the dispositive portion of the 5 May 2004 resolution in a Memorandum[15] which she issued the next day. On 9 May 2004, Eusebio filed a motion for reconsideration[16] of the resolution of the COMELEC First Division.

On election day itself, Chairman Abalos issued the first of the three questioned COMELEC issuances. In a memorandum, Chairman Abalos enjoined Director Ladra from implementing the COMELEC First Division's 5 May 2004 resolution due to Eusebio's motion for reconsideration. The 10 May 2004 memorandum stated:

Considering the pendency of a Motion for Reconsideration timely filed by Respondent, Vicente P. Eusebio[,] with the Commission En Banc, you are hereby ENJOINED from implementing the Resolution promulgated on May 5, 2004, in the x x x case until further orders from the Commission En Banc.[17] (Emphasis in the original)

On 11 May 2004, the day after the elections, petitioners Lanot, Peralta, dela Paz, Yamat, and Cruz filed before the COMELEC En Banc a motion to suspend the counting and canvassing of votes and the proclamation of the winning mayoral candidate for Pasig City.[18] Without waiting for Eusebio's opposition, the COMELEC En Banc partially denied the motion on the same day. The dispositive portion of the Order declared:

WHEREFORE, in view of the foregoing, the Commission En Banc DENIES the motion for suspension of the counting of votes and the canvassing of votes. However, in order not to render moot and academic the issues for final disposition by the En Banc and considering that on the basis of the Resolution of the FIRST DIVISION, the evidence of respondent's guilt is strong, the Commission En Banc hereby ORDERS to SUSPEND, UNTIL FURTHER ORDERS OF THE COMMISSION, the proclamation of respondent in the event he receives the winning number of votes.[19] (Emphasis in the original)

On 12 May 2004, Eusebio filed his opposition to petitioners' motion.

On 21 May 2004, the COMELEC En Banc issued the second questioned issuance. The order quoted from the motion for advisory opinion of the Pasig City Board of Canvassers which reported that 98% of the total returns of Pasig City had been canvassed and that there were only 32 uncanvassed returns involving 6,225 registered voters. Eusebio had 119,693 votes while Lanot had 108,941 votes. Thus, the remaining returns would not affect Eusebio's lead over Lanot. The COMELEC En Banc stated its "established policy" to "expedite the canvass of votes and proclamation of winning candidates to ease the post election tension and without prejudice to [its] action in [the] x x x case"[20] and resolved to declare Eusebio as Pasig City Mayor. The dispositive portion of the 21 May 2004 Order read:

WHEREFORE, this Commission RESOLVED, as it hereby RESOLVES, to LIFT AND SET ASIDE the order suspending the proclamation of the respondent.

FURTHER, the City Board of Canvassers is DIRECTED to complete [the] canvass and immediately proceed with the proclamation of the winning candidate for Mayor of Pasig City without prejudice to the final outcome of the case entitled, "Henry P. Lanot, et al., vs. Vicente Eusebio[, "] docketed as SPA No. 04-288.[21] (Emphasis in the original)

Eusebio was proclaimed as Pasig City Mayor on 23 May 2004 based on the 21 May 2004 Order. On 25 June and 6 July 2004, the COMELEC En Banc conducted hearings on Eusebio's motion for reconsideration of the 5 May 2004 COMELEC First Division resolution. On 6 August 2004, Lanot filed a motion to annul Eusebio's proclamation and to order his proclamation instead.[22]

On 20 August 2004, the COMELEC En Banc promulgated the third questioned issuance. The COMELEC En Banc invoked Section 1 of COMELEC Resolution No. 2050 ("Resolution 2050") and this Court's rulings in *Albaña v. COMELEC*,[23] *Lonzanida v. COMELEC*,[24] and *Sunga v. COMELEC*[25] in justifying the annulment of the order to disqualify Eusebio and the referral of the case to the Law Department for preliminary investigation. The dispositive portion stated:

WHEREFORE, PREMISES CONSIDERED, the resolution promulgated by the First Division dated 8 May 2004 on the above-captioned case, affirming the recommendation of the Regional Director (NCR) to disqualify herein respondent, is hereby SET ASIDE, and the corresponding ORDER issued thereunder, ANNULLED. Accordingly, this case is referred to the Law Department for investigation to finally determine [whether] the acts complained of were in fact committed by respondent Eusebio.[26] (Emphasis in the original)

Hence, this petition.

The Issues

Lanot alleged that as the COMELEC's issuances are not supported by substantial evidence and are contrary to law and settled jurisprudence, the COMELEC committed grave abuse of discretion amounting to lack of or excess of jurisdiction. Lanot raised the following issues before this Court:

- WHETHER PUBLIC RESPONDENT COMELEC, IN ISSUING [ITS] RESOLUTION DATED AUGUST 20, 2004, ACTED WITH GRAVE ABUSE OF DISCRETION OR LACK OR IN EXCESS OF JURISDICTION
- by setting aside the Resolution of Disqualification promulgated by its First Division on May 5, 2004 affirming the recommendation of the Regional Election Director (NCR) to disqualify Respondent, and by annulling the order issued thereunder,
 - a) erroneously, whimsically and maliciously ADOPTED and APPLIED Sections 1 and 2 of Rule 2050 to this case,
 - b) capriciously VIOLATED COMELEC Resolution 6452 and Sec. 6, R.A. 6646,
 - c) erroneously, whimsically and capriciously ARROGATED unto themselves a quasi-judicial legislation, and
 - d) erroneously and maliciously MISAPPLIED the *Albaña* and *Sunga* cases to the case at bar;
- by referring the case to the Law Department for investigation, it illegally, erroneously and maliciously DISMISSED the electoral aspect of the case and whimsically VIOLATED Resolution 6452 and Section 6 of RA 6646;
- by disregarding the Order of disqualification, it erroneously and whimsically IGNORED and DISREGARDED the inchoate right of petitioner as the winning party.
- WHETHER PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION OR IN EXCESS OR LACK OF JURISDICTION IN ISSUING ITS RESOLUTION DATED MAY 21, 2004
- by lifting and setting aside the Order of suspension of proclamation by winning candidate issued on May 11, 2004, it erroneously and intentionally and whimsically DISREGARDED the strong evidence of guilt of

Respondent to warrant the suspension of his proclamation and erroneously and capriciously VIOLATED Resolution of May 11, 2004.

- WHETHER CHAIRMAN BENJAMIN ABALOS OF THE COMELEC ACTED WITH GRAVE ABUSE OF POWER, AUTHORITY OR DISCRETION OR LACK OR IN EXCESS OF JURISDICTION

- by unilaterally enjoining the implementation of the Order of Respondent's disqualification despite the condition therein that it could only be restrained by the Commission En Banc, and whether or not he illegally, erroneously and blatantly whimsically grabbed the exclusive adjudicatory power of the Commission En Banc.

- WHETHER RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN CAPRICIOUSLY DISREGARDING THE RESOLUTION OF MAY 5, 2004 AS ALREADY FINAL AND EXECUTED AND IN FAILING TO ORDER THE PROCLAMATION OF PETITIONER.

- a) WHETHER THERE ARE PREPONDERANT EVIDENCE TO WARRANT RESPONDENT EUSEBIO'S DISQUALIFICATION.

b) WHETHER RESPONDENT EUSEBIO SHOULD BE DEEMED DISQUALIFIED WITH FOUR (4) AFFIRMATIVE VOTES OF COMMISSIONERS, TWO (2) VOTES FROM COMMISSIONERS BORRA AND GARCILLANO WHO VOTED FOR THE DISQUALIFICATION IN THE MAY 5, 2004

RESOLUTION (ANNEX "B") AND TWO (2) VOTES FROM COMMISSIONERS TUAZON, JR. AND SADAIN WHO VOTED TO DISQUALIFY HIM IN THEIR DISSENTING OPINION (ANNEX "A-1") SHOULD REFERRAL OF THE CASE TO THE LAW DEPARTMENT BY RESPONDENT COMELEC BE DECLARED A PATENT NULLITY.

- IN CASE OF DISQUALIFICATION OF RESPONDENT EUSEBIO, WHETHER PETITIONER LANOT CAN BE PROCLAIMED AND ALLOWED TO SIT AS MAYOR-ELECT, AND WHETHER THE DOCTRINES IN TOPACIO, CODILLA, JR., LABO AND OTHERS APPLY IN THIS CASE.[27]

The Ruling of the Court

The petition has no merit.

Parties to the Present Petition

On 13 April 2005, during the pendency of this case, an unidentified person shot and killed Lanot in Pasig City. It seemed that, like an endangered specie, the disqualification case would be extinguished by Lanot's death. However, on 27 April 2005, Lanot's counsel manifested, over Eusebio's objections, that Mario S. Raymundo ("Raymundo"), a registered voter and former Mayor of Pasig City, is Lanot's substitute in this case. Also, on 25 August 2005, Charmie Q. Benavides ("Benavides"), a Pasig City mayoral candidate and the third placer in the 10 May 2004 elections, filed a petition-in-intervention. Benavides asked whether she could be proclaimed Pasig City Mayor because she is the surviving qualified candidate with the highest number of votes among the remaining candidates.

The law and the COMELEC rules have clear pronouncements that the electoral aspect of a disqualification case is not rendered inutile by the death of petitioner, provided that there is a proper substitution or intervention of parties while there is a pending case. On Raymundo's substitution, any citizen of voting age is competent to continue the action in Lanot's stead.[28] On Benavides' intervention, Section 6 of Republic Act No. 6646, or the Electoral Reforms Law of 1987 ("Electoral Reforms Law of 1987"), allows intervention in proceedings for disqualification even after elections if no final judgment has been rendered. Although Eusebio was already proclaimed as Pasig

City Mayor, Benavides could still intervene, as there was still no final judgment in the proceedings for disqualification.[29]

The case for disqualification exists, and survives, the election and proclamation of the winning candidate because an outright dismissal will unduly reward the challenged candidate and may even encourage him to employ delaying tactics to impede the resolution of the disqualification case until after he has been proclaimed.[30] The exception to the rule of retention of jurisdiction after proclamation applies when the challenged candidate becomes a member of the House of Representatives or of the Senate, where the appropriate electoral tribunal would have jurisdiction. There is no law or jurisprudence which says that intervention or substitution may only be done prior to the proclamation of the winning candidate. A substitution is not barred by prescription because the action was filed on time by the person who died and who is being substituted. The same rationale applies to a petition-in-intervention.

COMELEC's Grave Abuse of Discretion

Propriety of Including Eusebio's Name in the Pasig City Mayoral Candidates and of the Counting of Votes and Canvassing of Election Returns

In its 5 May 2004 resolution, the COMELEC First Division ordered the pertinent election officials to delete and cancel Eusebio's name from the certified list of Pasig City mayoral candidates, not to count votes cast in Eusebio's favor, and not to include votes cast in Eusebio's favor in the canvass of election returns. Eusebio filed a motion for reconsideration of the resolution on 9 May 2004. Hence, COMELEC Chairman Abalos issued a memorandum on 10 May 2004 which enjoined the pertinent election officials from implementing the 5 May 2004 resolution. In a Resolution dated 11 May 2004, the COMELEC En Banc subsequently ratified and adopted Chairman Abalos' 10 May 2004 memorandum when it denied Lanot's motion to suspend the counting of votes and canvassing of election returns.

Lanot claims that Chairman Abalos whimsically grabbed the adjudicatory power of the COMELEC En Banc when he issued the 10 May 2004 memorandum. Lanot asserts that the last sentence in the dispositive portion of the COMELEC First Division's 5 May 2004 Resolution, "[t]his Resolution is immediately executory unless restrained by the Commission En Banc," should have prevented Chairman Abalos from acting on his own.

Lanot's claim has no basis, especially in light of the 11 May 2004 Resolution of the COMELEC En Banc. The COMELEC En Banc's explanation is apt:

Suspension of these proceedings is tantamount to an implementation of the Resolution of the FIRST DIVISION which had not yet become final and executory by reason of the timely filing of a Motion for Reconsideration thereof. A disposition that has not yet attained finality cannot be implemented even through indirect means.[31]

Moreover, Chairman Abalos' 10 May 2004 memorandum is merely an advisory required by the circumstances at the time. Eusebio filed a motion for reconsideration on 9 May 2004, and there was not enough time to resolve the motion for reconsideration before the elections. Therefore, Eusebio was not yet disqualified by final judgment at the time of the elections. Section 6 of the Electoral Reforms Law of 1987 provides that "[a] 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." Under Section 13 of the COMELEC Rules of Procedure, a decision or resolution of a Division in a special action becomes final and executory after the lapse of fifteen days following its promulgation while a decision or resolution of the COMELEC En Banc becomes final and executory after five days from its promulgation unless restrained by this Court.

Propriety of the Lifting of the Suspension of Eusebio's Proclamation

In the same 11 May 2004 Resolution, the COMELEC En Banc ordered the suspension of Eusebio's proclamation in the event he would receive the winning number of votes. Ten days later, the COMELEC En Banc set aside the 11 May 2004 order and directed the Pasig City Board of Canvassers to proclaim Eusebio as the winning candidate for Pasig City Mayor. The COMELEC relied on Resolutions 7128 and 7129[32] to justify the counting of Eusebio's votes and quoted from the Resolutions as follows:

Resolution No. 7128 -

x x x x

NOW THEREFORE, the Commission RESOLVED, as it hereby RESOLVES, to adopt certain policies and to direct all Board of Canvassers, as follows:

- to speed up its canvass and proclamation of all winning candidates except under the following circumstances:

- issuance of an order or resolution suspending the proclamation;

- valid appeal[s] from the rulings of the board in cases where appeal is allowed and the subject appeal will affect the results of the elections;

x x x x.

Resolution No. 7129

x x x x

NOW THEREFORE, the Commission on Elections, by virtue of the powers vested in it by the Constitution, the Omnibus Election Code and other elections laws, has RESOLVED, as it hereby RESOLVES, to refrain from granting motions and petitions seeking to postpone proclamations by the Board of Canvassers and other pleadings with similar purpose unless they are grounded on compelling reasons, supported by convincing evidence and/or violative of the canvassing procedure outlined in Resolution No. 6669.

We agree with Eusebio that the COMELEC En Banc did not commit grave abuse of discretion in issuing its 21 May 2004 order. The COMELEC has the discretion to suspend the proclamation of the winning candidate during the pendency of a disqualification case when evidence of his guilt is strong.[33] However, an order suspending the proclamation of a winning candidate against whom a disqualification case is filed is merely provisional in nature and can be lifted when warranted by the evidence.[34]

Propriety of the Dismissal of the Disqualification Case and of the Referral to the COMELEC Law Department

Lanot filed the petition for disqualification on 19 March 2004, a little less than two months before the 10 May 2004 elections. Director Ladra conducted hearings on the petition for disqualification on 2, 5 and 7 April 2004. Director Ladra submitted her findings and recommendations to the COMELEC on 4 May 2004. The COMELEC First Division issued a resolution adopting Director Ladra's recommendations on 5 May 2004. Chairman Abalos informed the pertinent election officers of the COMELEC First Division's resolution through an Advisory dated 8 May 2004. Eusebio filed a Motion for Reconsideration on 9 May 2004. Chairman Abalos issued a memorandum to Director Ladra on election day, 10 May 2004, and enjoined her from implementing the 5 May 2004 COMELEC First Division resolution. The petition for disqualification was not yet finally resolved at the time of the elections. Eusebio's votes were counted and canvassed, after which Eusebio was proclaimed as the winning candidate for Pasig City Mayor. On 20 August 2004, the COMELEC En Banc set aside the COMELEC First Division's order and referred the case to the COMELEC Law Department.

In its 20 August 2004 resolution, the COMELEC En Banc relied heavily on the timing of the filing of the petition. The COMELEC En Banc invoked Section 1 of Resolution No. 2050, which states:

- Any complaint for the disqualification of a duly registered candidate based upon any of the grounds specifically enumerated under Section 68 of the Omnibus Election Code, filed directly with the Commission before an election in which the respondent is a candidate, shall be inquired into by the Commission for the purpose of determining whether the acts complained of have in fact been committed. Where the inquiry by the Commission results in a finding before election, that the respondent candidate did in fact commit the acts complained, the Commission shall order the disqualification of the respondent candidate from continuing as such candidate.

In case such complaint was not resolved before the election, the Commission may *motu proprio*, or on motion of any of the parties, refer the complaint to the Law Department of the Commission as the instrument of the latter in the exercise of its exclusive power to conduct a preliminary investigation of all cases involving criminal infractions of the election laws. Such recourse may be availed of irrespective of whether the respondent has been elected or has lost in the election. (Emphasis added)

The COMELEC also quoted from *Sunga v. COMELEC* to justify its referral of the disqualification case to its Law Department.

x x x We discern nothing in COMELEC Resolution No. 2050 declaring, ordering or directing the dismissal of a disqualification case filed before the election but which remained unresolved after the election. What the Resolution mandates in such a case is for the Commission to refer the complaint to its Law Department for investigation to determine whether the acts complained of have in fact been committed by the candidate sought to be disqualified. The findings of the Law Department then become the basis for disqualifying the erring candidate. This is totally different from the other two situations contemplated by Resolution No. 2050, i.e., a disqualification case filed after the election but before the proclamation of winners and that filed after the election and the proclamation of winners, wherein it was specifically directed by the same Resolution to be dismissed as a disqualification case.[35]

For his part, Eusebio asserts that the COMELEC has the prerogative to refer the disqualification case to its Law Department. Thus, no grave abuse of discretion can be imputed to the COMELEC. Moreover, the pendency of a case before the Law Department for purposes of preliminary investigation should be considered as continuation of the COMELEC's deliberations.

However, contrary to the COMELEC En Banc's reliance on Resolution No. 2050 in its 20 August 2004 resolution, the prevailing law on the matter is Section 6 of the Electoral Reforms Law of 1987. Any rule or action by the COMELEC should be in accordance with the prevailing law. Section 6 of the Electoral Reforms Law of 1987 provides:

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 shall continue with the trial and 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. (Emphasis added)

Moreover, this Court's ruling in *Sunga* was further explained in *Bagatsing v. COMELEC*,[36] thus:

The COMELEC in *Sunga* obviously misapplied Resolution No. 2050 in dismissing the disqualification case therein simply because it remained unresolved before the election and, in lieu thereof, referring it to its Law

Department for possible criminal prosecution of the respondent for violation of the election laws. Notably, there is nothing in paragraph 1 of Resolution No. 2050 which directs the dismissal of the disqualification case not resolved before the election. It says the COMELEC "may motu prop[r]io or on motion of any of the parties, refer the complaint to the Law Department of the Commission as an instrument of the latter in the exercise of its exclusive power to conduct a preliminary investigation of all cases involving criminal infractions of the election laws." The referral to the Law Department is discretionary on the part of the COMELEC and in no way may it be interpreted that the COMELEC will dismiss the disqualification case or will no longer continue with the hearing of the same. The reason for this is that a disqualification case may have two (2) aspects, the administrative, which requires only a preponderance of evidence to prove disqualification, and the criminal, which necessitates proof beyond reasonable doubt to convict. Where in the opinion of the COMELEC, the acts which are grounds for disqualification also constitute a criminal offense or offenses, referral of the case to the Law Department is proper.

x x x x

It bears stressing that the Court in *Sunga* recognized the difference between a disqualification case filed before and after an election when, as earlier mentioned, it stated that the referral of the complaint for disqualification where the case is filed before election "is totally different from the other two situations contemplated by Resolution No. 2050, i.e., a disqualification case filed after the election but before the proclamation of winners and that filed after the election and the proclamation of winners, wherein it was specifically directed by the same Resolution to be dismissed as a disqualification case."

Indeed, the 20 August 2004 resolution of the COMELEC En Banc betrayed its misunderstanding of the two aspects of a disqualification case. The electoral aspect of a disqualification case determines whether the offender should be disqualified from being a candidate or from holding office. Proceedings are summary in character and require only clear preponderance of evidence. An erring candidate may be disqualified even without prior determination of probable cause in a preliminary investigation. The electoral aspect may proceed independently of the criminal aspect, and vice-versa.

The criminal aspect of a disqualification case determines whether there is probable cause to charge a candidate for an election offense. The prosecutor is the COMELEC, through its Law Department, which determines whether probable cause exists.[37] If there is probable cause, the COMELEC, through its Law Department, files the criminal information before the proper court. Proceedings before the proper court demand a full-blown hearing and require proof beyond reasonable doubt to convict.[38] A criminal conviction shall result in the disqualification of the offender, which may even include disqualification from holding a future public office.[39]

The two aspects account for the variance of the rules on disposition and resolution of disqualification cases filed before or after an election. When the disqualification case is filed before the elections, the question of disqualification is raised before the voting public. If the candidate is disqualified after the election, those who voted for him assume the risk that their votes may be declared stray or invalid. There is no such risk if the petition is filed after the elections.[40] The COMELEC En Banc erred when it ignored the electoral aspect of the disqualification case by setting aside the COMELEC First Division's resolution and referring the entire case to the COMELEC Law Department for the criminal aspect.

Moreover, the COMELEC En Banc's act and Eusebio's assertions lose sight of the provisions of Resolution No. 6452 ("Resolution 6452"), "Rules Delegating to COMELEC Field Officials the Hearing and Reception of Evidence of Disqualification Cases Filed in Connection with the May 10, 2004 National and Local Elections; Motu Proprio Actions and Disposition of Disqualification Cases," promulgated on 10 December 2003. The pertinent portions of Resolution 6452 provide:

Section 1. Delegation of reception of evidence. — The Commission hereby designates its field officials who are

members of the Philippine Bar to hear and receive evidence in the following petitions:

x x x

c. Petition to disqualify a candidate pursuant to Sec. 68 of the Omnibus Election Code and disqualify a candidate for lack of qualifications or possessing same grounds for disqualification;

x x x

Sec. 2. Suspension of the Comelec Rules of Procedure. — In the interest of justice and in order to attain speedy disposition of cases, the Comelec Rules of Procedure or any portion thereof inconsistent herewith is hereby suspended.

Sec. 3. Where to file petitions. — The petitions shall be filed with the following offices of the Commission:

x x x

b. For x x x local positions including highly-urbanized cities, in the National Capital Region, with the Regional Election Director of said region;

x x x

PROVIDED, in cases of highly-urbanized cities the filing of petitions for disqualification shall be with the Office of the Regional Election Directors. x x x

x x x x

The Regional Election Directors concerned shall hear and receive evidence strictly in accordance with the procedure and timeliness herein provided.

Sec. 5. Procedure in filing petitions. — For purposes of the preceding section, the following procedure shall be observed:

x x x x

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

- The verified petition to disqualify a candidate pursuant to Sec. 68 of the Omnibus Election Code x x x may be filed any day after the last day [of] filing of certificates of candidacy but not later than the date of proclamation.

- The petition to disqualify a candidate pursuant to Sec. 68 of the Omnibus Election Code shall be filed in ten (10) legible copies with the concerned office mentioned in Sec. 3 personally or through a duly authorized representative 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; or

x x x

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

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.

x x x x

Indeed, what the COMELEC did in its 20 August 2004 resolution was contrary to "the interest of justice and x x x speedy disposition of cases." Resolution No. 2050 referring the electoral aspect to the Law Department is procedurally inconsistent with Resolution 6452 delegating reception of evidence of the electoral aspect to the Regional Election Director. The investigation by the Law Department under Resolution No. 2050 produces the same result as the investigation under Resolution 6452 by the Regional Election Director. Commissioner Tuason's dissent underscored the inconsistency between the avowed purpose of Resolution 6452 and the COMELEC En Banc's 20 August 2004 resolution:

x x x [T]he preliminary investigation for purposes of finding sufficient ground for [Eusebio's] disqualification, has already been accomplished by the RED-NCR prior to the election. There also appears no doubt in my mind, that such recommendation of the investigating officer, RED-NCR, was substantive and legally sound. The First Division agreed with the result of the investigation/recommendation, with the facts of the case clearly distilled in the assailed resolution. This, I likewise found to be in accord with our very own rules and the jurisprudential doctrines aforesated. There could be no rhyme and reason then to dismiss the electoral aspect of the case (i.e., disqualification) and refer the same to the Law Department for preliminary investigation. As held in Sunga, clearly, the legislative intent is that the COMELEC should continue the trial and hearing of the disqualification case to its conclusion, i.e., until judgment is rendered thereon. The criminal aspect of the case is an altogether different issue.

Sunga said the reason is obvious: A candidate guilty of election offenses would be undeservedly rewarded, instead of punished, by the dismissal of the disqualification case against him simply because the investigating body was unable, for any reason caused upon it, to determine before the election if the offenses were indeed committed by the candidate sought to be disqualified. All that the erring aspirant would need to do is to employ delaying tactics so that the disqualification case based on the commission of election offenses would not be decided before the election. This scenario is productive of more fraud which certainly is not the main intent and purpose of the law.[41]

We agree with Lanot that the COMELEC committed grave abuse of discretion when it ordered the dismissal of the disqualification case pending preliminary investigation of the COMELEC Law Department. A review of the COMELEC First Division's 5 May 2004 resolution on Eusebio's disqualification is in order, in view of the grave abuse of discretion committed by the COMELEC En Banc in its 20 August 2004 resolution.

Rightful Pasig City Mayor

Eusebio's Questioned Acts

We quote the findings and recommendations of Director Ladra as adopted by the COMELEC First Division:

The questioned acts of [Eusebio] are as follows:

1) The speech uttered on February 14, 2004 during the meeting dubbed as "Lingap sa Barangay" in Barangay San Miguel, Pasig City wherein [Eusebio] allegedly asked the people to vote for him and solicited for their support x x x:

x x x x

2) Another speech given on March 17, 2004 in ROTC St., Rosario, Pasig City wherein [Eusebio] again allegedly uttered defamatory statements against co-[candidate] Lanot and campaigned for his (respondent's) and his group's candidacy.

x x x x

3) He caused to be published in leading newspapers about a survey allegedly done by Survey Specialist, Inc. showing him to be leading in the mayoralty race in Pasig City.

x x x x

4) He paid a political advertisement in the Philippine Free Press in the amount of P193,660.00 as published in its issue dated February 7, 2004.

x x x x

5) The display of billboards containing the words "Serbisyo Eusebio" and "ST" which means "Serbisong Totoo" before the start of the campaign period.

x x x x

6) Posters showing the respondent and his running mate Yoyong Martirez as well those showing the name "KA ENTENG EUSEBIO" and "BOBBY EUSEBIO" in connection with the dengue project were posted everywhere even before the start of the campaign period.

x x x x

7) Streamers bearing the words "Pasig City is for PEACE" were likewise displayed with the two letters "E" prominently written.

x x x x

8) Stickers of [Eusebio] were likewise pasted all over the city before the start of the campaign period.

x x x x

9) [Eusebio] engaged in vote-buying by distributing shoes to the students while telling the parents that by way of gratitude, they should vote for him.

x x x x (Emphasis in the original)[42]

Eusebio argues that: (1) Lanot is in estoppel for participating in the proceedings before the COMELEC Law Department; (2) Lanot abandoned the present petition also because of his participation in the proceedings before the COMELEC Law Department; and (3) Lanot is guilty of forum-shopping. These arguments fail for lack of understanding of the two aspects of disqualification cases. The proceedings before the COMELEC Law Department concern the criminal aspect, while the proceedings before this Court concern the electoral aspect, of disqualification cases. The proceedings in one may proceed independently of the other.

Eusebio is correct when he asserts that this Court is not a trier of facts. What he overlooks, however, is that this Court may review the factual findings of the COMELEC when there is grave abuse of discretion and a showing of arbitrariness in the COMELEC's decision, order or resolution.[43] We find that the COMELEC committed grave abuse of discretion in issuing its 20 August 2004 resolution.

Our review of the factual findings of the COMELEC, as well as the law applicable to this case, shows that there is no basis to disqualify Eusebio. Director Ladra recommended the disqualification of Eusebio "for violation of Section 80 of the Omnibus Election Code." The COMELEC First Division approved Director Ladra's recommendation and disqualified Eusebio. Section 80 of the Omnibus Election Code provides:

SECTION 80. Election campaign or partisan political activity outside campaign period. — It shall be unlawful for any person, whether or not a voter or candidate, or for any party, or association of persons, to engage in an

election campaign or partisan political activity except during the campaign period: Provided, That political parties may hold political conventions or meetings to nominate their official candidates within thirty days before the commencement of the campaign period and forty-five days for Presidential and Vice-Presidential election. (Emphasis supplied)

What Section 80 of the Omnibus Election Code prohibits is "an election campaign or partisan political activity" by a "candidate" "outside" of the campaign period. Section 79 of the same Code defines "candidate," "election campaign" and "partisan political activity" as follows:

SECTION 79. Definitions. — As used in this Code:

(a) The term "candidate" refers to any person aspiring for or seeking an elective public office, who has filed a certificate of candidacy by himself or through an accredited political party, aggroupment, or coalition of parties;

(b) The term "election campaign" or "partisan political activity" refers to an act designed to promote the election or defeat of a particular candidate or candidates to a public office which shall include:

(1) Forming organizations, associations, clubs, committees or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign for or against a candidate;

(2) Holding political caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a candidate;

(3) Making speeches, announcements or commentaries, or holding interviews for or against the election of any candidate for public office;

(4) Publishing or distributing campaign literature or materials designed to support or oppose the election of any candidate; or

(5) Directly or indirectly soliciting votes, pledges or support for or against a candidate.

The foregoing enumerated acts if performed for the purpose of enhancing the chances of aspirants for nomination for candidacy to a public office by a political party, aggroupment, or coalition of parties shall not be considered as election campaign or partisan election activity.

Public expressions or opinions or discussions of probable issues in a forthcoming election or on attributes of or criticisms against probable candidates proposed to be nominated in a forthcoming political party convention shall not be construed as part of any election campaign or partisan political activity contemplated under this Article.

Thus, the essential elements for violation of Section 80 of the Omnibus Election Code are: (1) a person engages in an election campaign or partisan political activity; (2) the act is designed to promote the election or defeat of a particular candidate or candidates; (3) the act is done outside the campaign period.

The second element requires the existence of a "candidate." Under Section 79(a), a candidate is one who "has filed a certificate of candidacy" to an elective public office. Unless one has filed his certificate of candidacy, he is not a "candidate." The third element requires that the campaign period has not started when the election campaign or partisan political activity is committed.

Assuming that all candidates to a public office file their certificates of candidacy on the last day, which under Section 75 of the Omnibus Election Code is the day before the start of the campaign period, then no one can be prosecuted for violation of Section 80 for acts done prior to such last day. Before such last day, there is no "particular candidate or candidates" to campaign for or against. On the day immediately after the last day of filing, the campaign period starts and Section 80 ceases to apply since Section 80 covers only acts done "outside" the

campaign period.

Thus, if all candidates file their certificates of candidacy on the last day, Section 80 may only apply to acts done on such last day, which is before the start of the campaign period and after at least one candidate has filed his certificate of candidacy. This is perhaps the reason why those running for elective public office usually file their certificates of candidacy on the last day or close to the last day.

There is no dispute that Eusebio's acts of election campaigning or partisan political activities were committed outside of the campaign period. The only question is whether Eusebio, who filed his certificate of candidacy on 29 December 2003, was a "candidate" when he committed those acts before the start of the campaign period on 24 March 2004.

Section 11 of Republic Act No. 8436 ("RA 8436") moved the deadline for the filing of certificates of candidacy to 120 days before election day. Thus, the original deadline was moved from 23 March 2004 to 2 January 2004, or 81 days earlier. The crucial question is: did this change in the deadline for filing the certificate of candidacy make one who filed his certificate of candidacy before 2 January 2004 immediately liable for violation of Section 80 if he engaged in election campaign or partisan political activities prior to the start of the campaign period on 24 March 2004?

Section 11 of RA 8436 provides:

SECTION 11. Official Ballot. — The Commission shall prescribe the size and form of the official ballot which shall contain the titles of the positions to be filled and/or the propositions to be voted upon in an initiative, referendum or plebiscite. Under each position, the names of candidates shall be arranged alphabetically by surname and uniformly printed using the same type size. A fixed space where the chairman of the Board of Election Inspectors shall affix his/her signature to authenticate the official ballot shall be provided.

Both sides of the ballots may be used when necessary.

For this purpose, the deadline for the filing of certificate of candidacy/petition for registration/manifestation to participate in the election shall not be later than one hundred twenty (120) days before the elections: Provided, That, any elective official, whether national or local, running for any office other than the one which he/she is holding in a permanent capacity, except for president and vice-president, shall be deemed resigned only upon the start of the campaign period corresponding to the position for which he/she is running: Provided, further, That, unlawful acts or omissions applicable to a candidate shall take effect upon the start of the aforesaid campaign period: Provided, finally, That, for purposes of the May 11, 1998 elections, the deadline for filing of the certificate of candidacy for the positions of President, Vice-President, Senators and candidates under the party-list system as well as petitions for registration and/or manifestation to participate in the party-list system shall be on February 9, 1998 while the deadline for the filing of certificate of candidacy for other positions shall be on March 27, 1998.

The official ballots shall be printed by the National Printing Office and/or the Bangko Sentral ng Pilipinas at the price comparable with that of private printers under proper security measures which the Commission shall adopt. The Commission may contract the services of private printers upon certification by the National Printing Office/Bangko Sentral ng Pilipinas that it cannot meet the printing requirements. Accredited political parties and deputized citizens' arms of the Commission may assign watchers in the printing, storage and distribution of official ballots.

To prevent the use of fake ballots, the Commission through the Committee shall ensure that the serial number on the ballot stub shall be printed in magnetic ink that shall be easily detectable by inexpensive hardware and shall be impossible to reproduce on a photocopying machine, and that identification marks, magnetic strips, bar codes and other technical and security markings, are provided on the ballot.

The official ballots shall be printed and distributed to each city/municipality at the rate of one (1) ballot for every registered voter with a provision of additional four (4) ballots per precinct.[44] (Emphasis added)

Under Section 11 of RA 8436, the only purpose for the early filing of certificates of candidacy is to give ample time for the printing of official ballots. This is clear from the following deliberations of the Bicameral Conference Committee:

SENATOR GONZALES. Okay. Then, how about the campaign period, would it be the same[,] uniform for local and national officials?

THE CHAIRMAN (REP. TANJUATCO). Personally, I would agree to retaining it at the present periods.

SENATOR GONZALES. But the moment one files a certificate of candidacy, he's already a candidate, and there are many prohibited acts on the part of candidate.

THE CHAIRMAN (REP. TANJUATCO). Unless we. . .

SENATOR GONZALES. And you cannot say that the campaign period has not yet began [sic].

THE CHAIRMAN (REP. TANJUATCO). If we don't provide that the filing of the certificate will not bring about one's being a candidate.

SENATOR GONZALES. If that's a fact, the law cannot change a fact.

THE CHAIRMAN (REP. TANJUATCO). No, but if we can provide that the filing of the certificate of candidacy will not result in that official vacating his position, we can also provide that insofar he is concerned, election period or his being a candidate will not yet commence. Because here, the reason why we are doing an early filing is to afford enough time to prepare this machine readable ballots.

So, with the manifestations from the Commission on Elections, Mr. Chairman, the House Panel will withdraw its proposal and will agree to the 120-day period provided in the Senate version.

THE CHAIRMAN (SENATOR FERNAN). Thank you, Mr. Chairman.

x x x x

SENATOR GONZALES. How about prohibition against campaigning or doing partisan acts which apply immediately upon being a candidate?

THE CHAIRMAN (REP. TANJUATCO). Again, since the intention of this provision is just to afford the Comelec enough time to print the ballots, this provision does not intend to change the campaign periods as presently, or rather election periods as presently fixed by existing law.

THE ACTING CHAIRMAN (SEN. FERNAN). So, it should be subject to the other prohibition.

THE CHAIRMAN (REP. TANJUATCO). That's right.

THE ACTING CHAIRMAN (SEN. FERNAN). Okay.

THE CHAIRMAN (REP. TANJUATCO). In other words, actually, there would be no conflict anymore because we are talking about the 120-day period before election as the last day of filing a certificate of candidacy, election period starts 120 days also. So that is election period already. But he will still not be considered as a candidate.[45] (Emphasis added)

Thus, because of the early deadline of 2 January 2004 for purposes of printing of official ballots, Eusebio filed his certificate of candidacy on 29 December 2003. Congress, however, never intended the filing of a certificate of candidacy before 2 January 2004 to make the person filing to become immediately a "candidate" for purposes

other than the printing of ballots. This legislative intent prevents the immediate application of Section 80 of the Omnibus Election Code to those filing to meet the early deadline. The clear intention of Congress was to preserve the "election periods as x x x fixed by existing law" prior to RA 8436 and that one who files to meet the early deadline "will still not be considered as a candidate."

Under Section 3(b) of the Omnibus Election Code, the applicable law prior to RA 8436, the campaign period for local officials commences 45 days before election day. For the 2004 local elections, this puts the start of the campaign period on 24 March 2004. This also puts the last day for the filing of certificate of candidacy, under the law prior to RA 8436, on 23 March 2004. Eusebio is deemed to have filed his certificate of candidacy on this date for purposes other than the printing of ballots because this is the interpretation of Section 80 of the Omnibus Election Code most favorable to one charged of its violation. Since Section 80 defines a criminal offense,[46] its provisions must be construed liberally in favor of one charged of its violation. Thus, Eusebio became a "candidate" only on 23 March 2004 for purposes other than the printing of ballots.

Acts committed by Eusebio prior to his being a "candidate" on 23 March 2004, even if constituting election campaigning or partisan political activities, are not punishable under Section 80 of the Omnibus Election Code. Such acts are protected as part of freedom of expression of a citizen before he becomes a candidate for elective public office. Acts committed by Eusebio on or after 24 March 2004, or during the campaign period, are not covered by Section 80 which punishes only acts outside the campaign period.

We now examine the specific questioned acts of Eusebio whether they violate Section 80 of the Omnibus Election Code.

We begin with the 14 February 2004 and the 17 March 2004 speeches of Eusebio:

- 1) The speech uttered on February 14, 2004 during the meeting dubbed as "Lingap sa Barangay" in Barangay San Miguel, Pasig City wherein [Eusebio] allegedly asked the people to vote for him and solicited for their support x x x:2) Another speech given on March 17, 2004 in ROTC St., Rosario, Pasig City wherein [Eusebio] again allegedly uttered defamatory statements against co-[candidate] Lanot and campaigned for his (respondent's) and his group's candidacy.[47] (Emphasis in the original)

The 14 February 2004 and 17 March 2004 speeches happened before the date Eusebio is deemed to have filed his certificate of candidacy on 23 March 2004 for purposes other than the printing of ballots. Eusebio, not being a candidate then, is not liable for speeches on 14 February 2004 and 17 March 2004 asking the people to vote for him.

The survey showing Eusebio leading in the mayoralty race was published before Eusebio was deemed to have filed his certificate of candidacy on 23 March 2004. Thus:

- 3) He caused to be published in leading newspapers about a survey allegedly done by Survey Specialist, Inc. showing him to be leading in the mayoralty race in Pasig City.

x x x x

They also presented Certification issued by Mr. Diego Cagahastian, News Editor of Manila Bulletin dated 10 March 2004 and Mr. Isaac G. Belmonte, Editor-in-Chief of Philippine Star dated March 2, 2004 to the effect that the articles in question came from the camp of [Eusebio].[48] (Emphasis in the original)

Eusebio is not liable for this publication which was made before he became a candidate on 23 March 2004.

The political advertisement in the Philippine Free Press issue of 7 February 2004 was also made before Eusebio became a candidate on 23 March 2004. Thus:

4) He paid a political advertisement in the Philippine Free Press in the amount of P193,660.00 as published in its issue dated February 7, 2004.[49] (Emphasis in the original)

The display of Eusebio's billboards, posters, stickers, and streamers, as well as his distribution of free shoes, all happened also before Eusebio became a candidate on 23 March 2004. Thus:

5) The display of billboards containing the words "Serbisyo Eusebio" and "ST" which means "Serbisong Totoo" before the start of the campaign period.

x x x x

6) Posters showing the respondent and his running mate Yoyong Martinez as well those showing the name "KA ENTENG EUSEBIO" and "BOBBY EUSEBIO" in connection with the dengue project were posted everywhere even before the start of the campaign period.

x x x x

Petitioners' witnesses Alfonso Cordova and Alfredo Lacsamana as well as Hermogenes Garcia stated in their respective affidavits marked as Exhs. "L" and "L-1" that the pictures were taken on March 3, 7 & 8, 2004.

x x x x

7) Streamers bearing the words "Pasig City is for PEACE" were likewise displayed with the two letters "E" prominently written.

x x x x

Said streamers were among those captured by the camera of the petitioners' witnesses Hermogenes Garcia and Nelia Sarmiento before the start of the campaign period.

8) Stickers of [Eusebio] were likewise pasted all over the city before the start of the campaign period.

x x x x

9) [Eusebio] engaged in vote-buying by distributing shoes to the students while telling the parents that by way of gratitude, they should vote for him.

The affidavits of Ceferino Tantay marked as Exh. "M" and Flor Montefalcon, Norie Altiche and Myrna Verdillo marked as Exh. "O" are uncontroverted. Their statement that free shoes were given to the students of Rizal High School was corroborated by the Manila Bulletin issue of February 6, 2004 which showed the picture of the respondent delivering his speech before a group of students.

x x x x[50] (Emphasis in the original)

Based on the findings of Director Ladra, the questioned acts attributed to Eusebio all occurred before the start of the campaign period on 24 March 2004. Indeed, Director Ladra applied Section 80 of the Omnibus Election Code against Eusebio precisely because Eusebio committed these acts "outside" of the campaign period. However, Director Ladra erroneously assumed that Eusebio became a "candidate," for purposes of Section 80, when Eusebio filed his certificate of candidacy on 29 December 2003.

Under Section 11 of RA 8436, Eusebio became a "candidate," for purposes of Section 80 of the Omnibus Election Code, only on 23 March 2004, the last day for filing certificates of candidacy. Applying the facts - as found by Director Ladra and affirmed by the COMELEC First Division - to Section 11 of RA 8436, Eusebio clearly did not violate Section 80 of the Omnibus Election Code which requires the existence of a "candidate," one who has filed his certificate of candidacy, during the commission of the questioned acts.

Eusebio asserts that Section 11 of RA 8436 exculpates him from any liability for the questioned acts. Eusebio points out that Section 11 contains the following proviso:

Provided, further, That, unlawful acts or omissions applicable to a candidate shall take effect upon the start of the aforesaid campaign period: x x x

Eusebio theorizes that since the questioned acts admittedly took place before the start of the campaign period, such acts are not "unlawful acts or omissions applicable to a candidate."

We find no necessity to apply in the present case this proviso in Section 11 of RA 8436. Eusebio's theory legalizes election campaigning or partisan political activities before the campaign period even if a person has already filed his certificate of candidacy based on the election periods under existing laws prior to RA 8436. Under Eusebio's theory, Section 11 of RA 8436 punishes unlawful acts applicable to a candidate only if committed during the campaign period.

By definition, the election offense in Section 80 of the Omnibus Election Code cannot be committed during the campaign period. On the other hand, under Eusebio's theory, unlawful acts applicable to a candidate cannot be committed outside of the campaign period. The net result is to make the election offense in Section 80 physically impossible to commit at any time. We shall leave this issue for some other case in the future since the present case can be resolved without applying the proviso in Section 11 of RA 8436.

Effect of Eusebio's Possible Disqualification

As second placer, Lanot prayed that he be proclaimed as the rightful Pasig City Mayor in the event of Eusebio's disqualification. As third placer, Benavides, on the other hand, prays that she be proclaimed as the rightful Pasig City Mayor in the event of Eusebio's disqualification and in view of Lanot's death. Even if we assume Eusebio's disqualification as fact, we cannot grant either prayer.

The disqualification of the elected candidate does not entitle the candidate who obtained the second highest number of votes to occupy the office vacated because of the disqualification.[51] Votes cast in favor of a candidate who obtained the highest number of votes, against whom a petition for disqualification was filed before the election, are presumed to have been cast in the belief that he was qualified. For this reason, the second placer cannot be declared elected.[52]

The exception to this rule rests on two assumptions. First, the one who obtained the highest number of votes is disqualified. Second, the voters are so fully aware in fact and in law of a candidate's disqualification to bring such awareness within the realm of notoriety but nonetheless the voters still cast their votes in favor of the ineligible candidate.[53] Lanot and Benavides failed to prove that the exception applies in the present case. Thus, assuming for the sake of argument that Eusebio is disqualified, the rule on succession provides that the duly elected Vice-Mayor of Pasig City shall succeed in Eusebio's place.[54]

WHEREFORE, we DISMISS the petition. We find no grave abuse of discretion in the 10 May 2004 Advisory of Chairman Benjamin S. Abalos and in the 21 May 2004 Order of the Commission on Elections En Banc. We SET ASIDE the 20 August 2004 Resolution of the Commission En Banc since respondent Vicente P. Eusebio did not commit any act which would disqualify him as a candidate in the 10 May 2004 elections.

SO ORDERED.

Sandoval-Gutierrez, Carpio Morales, and Velasco, Jr., JJ., concur.

Quisumbing, Austria-Martinez, and Callejo, Sr., JJ., join see separate opinion of Panganiban, C.J..

Puno, Ynares-Santiago, Corona, Azcuna, Chico-Nazario, and Garcia, JJ., join Please see separate opinion of J..

Tinga.

[1] Under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure.

[2] Per Curiam Resolution with Chairman Benjamin S. Abalos and Commissioners, Resurreccion Z. Borra, Virgilio O. Garcillano, and Manuel A. Barcelona, Jr., concurring. Commissioner Florentino A. Tuason, Jr. wrote a separate dissenting opinion, where he was joined by Commissioner Mehol K. Sadain. Rollo, Vol. 1, pp. 91-104.

[3] En Banc Order with Chairman Benjamin S. Abalos and Commissioners Mehol K. Sadain, Resurreccion Z. Borra, Florentino A. Tuason, Jr., Virgilio O. Garcillano, and Manuel A. Barcelona, Jr., concurring. Commissioner Rufino S.B. Javier inhibited himself from the case. Id. at 155-159.

[4] Id. at 163.

[5] Per Curiam Resolution with only Commissioners Resurreccion Z. Borra and Virgilio O. Garcillano participating. Presiding Commissioner Rufino S.B. Javier had no part. Id. at 105-150.

[6] En Banc Order with Chairman Benjamin S. Abalos and Commissioners Rufino S.B. Javier, Resurreccion Z. Borra, and Florentino A. Tuason, Jr., concurring. Commissioners Mehol K. Sadain, Virgilio O. Garcillano, and Manuel A. Barcelona, Jr. dissented in part, stating that the issue of Eusebio's guilt must be decided on the merits. Id. at 160-162.

[7] This Resolution was referred to as the "resolution promulgated by the First Division dated 8 May 2004" by the COMELEC En Banc. A "Very Urgent Advisory" issued by Chairperson Abalos on 8 May 2004 was addressed to Atty. Esmeralda Amora-Ladra, Acting Regional Election Director of the National Capital Region; Atty. Romeo Alcazar, Acting Election Officer of the 1st District of Pasig City; Ms. Marina Gerona, Acting Election Officer of the 2nd District of Pasig City; and all Chairmen and Members of the Board of Election Inspectors and Pasig City Board of Canvassers. The 8 May 2004 Advisory merely reiterated the dispositive portion of the COMELEC First Division's 5 May 2004 Resolution. Id. at 151-152.

[8] Id. at 164-215.

[9] Id. at 216-240.

[10] Id. at 241-293.

[11] Id. at 294-337.

[12] Id. at 148.

[13] Id. at 149.

[14] Id. at 151. See also note 7.

[15] Id. at 153.

[16] Id. at 338-351.

[17] Id. at 163.

[18] Id. at 355-357.

[19] Id. at 162.

[20] Id. at 158.

[21] Id. at 158-159.

[22] Id. at 521-538.

[23] G.R. 163302, 23 July 2004, 435 SCRA 98.

[24] 370 Phil. 625 (1999).

[25] 351 Phil. 310 (1998).

[26] Rollo, Vol. 1, p. 95

[27] Id. at 11, 14-16.

[28] See The COMELEC Rules of Procedure, Rule 25, Sec. 1; COMELEC Resolution 6452 (2003). See also Mercado v. Manzano, 367 Phil. 132 (1999).

[29] See Mercado v. Manzano, 367 Phil. 132 (1999).

[30] See Lonzanida v. COMELEC, 370 Phil. 625 (1999); Sunga v. COMELEC, 351 Phil. 310 (1998). See also Lomugdang v. Javier, 128 Phil. 424 (1967) and De Mesa, et al. v. Mencias, et al., 124 Phil. 1187 (1966). Although the cases of Lomugdang and De Mesa concern election contests, these cases underscore this Court's policy of disregarding the statutorily prescribed time limit in allowing petitions for substitution and petitions in intervention. Moreover, in contrast to disqualification cases where the issues may be raised by any voter or political party, election contests raise questions which are personal to the protestant and protestee and may arguably be considered extinguished by the death of either party. Yet Lomugdang and De Mesa not only allowed substitution and intervention, they further declared that the perceived urgency in deciding election cases should give way to the ends of justice.

[31] Rollo, Vol. 1, p. 161.

[32] The COMELEC promulgated both Resolutions on 16 May 2004.

[33] The Electoral Reforms Law of 1987, Section 6.

[34] See Nolasco v. COMELEC, 341 Phil. 761 (1997).

[35] Supra note 25, at 321-322.

[36] 378 Phil. 585, 598-600 (1999).

[37] Omnibus Election Code, Section 265.

[38] See Bagatsing v. COMELEC, supra note 35; Sunga v. COMELEC, supra note 25; Nolasco v. COMELEC, supra note 33.

[39] See Omnibus Election Code, Section 264.

[40] See Bagatsing v. COMELEC, supra note 37.

[41] Rollo, Vol. 1, pp. 103-104.

[42] Id. at 135-148.

[43] See Nolasco v. COMELEC, supra note 33.

[44] Republic Act No. 9006 now allows all elective public officials, local or national, to hold on to their elective

offices even after filing their certificates of candidacy. Section 14 of RA 9006 provides:

SECTION 14. Repealing Clause. — Sections 67 and 85 of the Omnibus Election Code (Batas Pambansa Blg. 881) and Sections 10 and 11 of Republic Act No. 6646 are hereby repealed. As a consequence, the first proviso in the third paragraph of Section 11 of Republic Act No. 8436 is rendered ineffective. All laws, presidential decrees, executive orders, rules and regulations, or any part thereof inconsistent with the provisions of this Act are hereby repealed or modified or amended accordingly.

[45] Minutes of Bicameral Conference Committee on Constitutional Amendments, Revision of Codes and Laws, 16 December 1997, as certified by Director Antonia P. Barros, Legislative Records and Archives Service.

[46] Omnibus Election Code, Section 262.

[47] Rollo, Vol. 1, pp. 135, 139.

[48] Id. at 142.

[49] Id. at 143.

[50] Id. at 143-146.

[51] See *Kare v. COMELEC*, G.R. 157526, 28 April 2004, 428 SCRA 264; *Loreto v. Brion*, 370 Phil. 727 (1999); *Domino v. COMELEC*, 369 Phil. 798 (1999); *Reyes v. COMELEC*, 324 Phil. 813 (1996); *Aquino v. COMELEC*, G.R. No. 120265, 18 September 1995, 248 SCRA 400; *Labo, Jr. v. COMELEC*, G.R. No. 105111, 3 July 1992, 211 SCRA 297; *Abella v. COMELEC*, G.R. No. 100710, 3 September 1991, 201 SCRA 253; *Labo, Jr. v. COMELEC*, G.R. No. 86564, 1 August 1989, 176 SCRA 1; *Geronimo v. Ramos*, No. L-60504, 14 May 1985, 136 SCRA 435.

[52] See *Loreto v. Brion*, 370 Phil. 727 (1999).

[53] See *Grego v. COMELEC*, G.R. 125955, 19 June 1997, 274 SCRA 481.

[54] See The Local Government Code, Republic Act No. 7160, Section 44 (1991).

SEPARATE OPINION

PANGANIBAN, CJ:

While I agree "in the result" of the ponencia, which recommends that the Petition be dismissed, I have some reservations with regard to the discussion of the issue of whether Eusebio violated Section 80 of the Omnibus Election Code.

The ponencia states that "[u]nder Section 11 of RA 8436, Eusebio became a 'candidate,' for purposes of Section 80 of the Omnibus Election Code (OEC), only on 23 March 2004, the last day for filing certificates of candidacy." Pursuant to this statement, Eusebio, despite having filed a Certificate of Candidacy on December 29, 2003, was still not deemed a candidate until the last day for filing certificates of candidacy. This proposition seems to disregard the definition of a "candidate" as stated in Section 79 (a).[1] The bases given in the ponencia[2] for this action are (1) the law prior to RA 8436; and (2) liberal construction, in favor of the accused.

In my view, these grounds are insufficient. First, being the more current law, Republic Act 8436 now conveys the legislative will. Hence, the prior law, if inconsistent with it, can no longer be applied. Therefore, the earlier law, which set the deadline of the filing of the certificate of candidacy on the day before the beginning of the campaign

period,[3] can no longer be followed because the present law has reset the deadline at 120 days before election day. Candidates thus need to file only one certificate of candidacy. To encourage, or to deem as proper, the filing of two certificates (the first for purposes of the ballot and the second for all other purposes) --whether actual or in principle -- will merely promote unnecessary waste and confusion.

Second, the present case concerns only the electoral and not the criminal aspect, as very well differentiated in the ponencia. Hence, a liberal interpretation of Section 80 is not called for. More important, the determination of who is a candidate in relation to the filing of a certificate of candidacy involves Section 79 of the OEC and Republic Act 8436, not Section 80 of the OEC. Not being penal, these provisions should not be construed liberally in favor of the "accused."

Indeed, the deliberations on Republic Act 8436 show that the lawmakers initially thought that the filing of a certificate of candidacy to meet the deadline for purposes of the ballot will not deem the filer a candidate for other purposes, particularly in connection with a candidate's prohibited acts. This idea, however, did not appear in the final approved version of the law. As it is, there appears no basis or necessity for distinguishing when a person is considered a candidate for the purposes of printing the ballots, on the one hand; and for other purposes, on the other.

To stress, what came out in the final approved law was the Section 11 proviso, which reads as follows: "Provided, further, That, unlawful acts or omissions applicable to a candidate shall take effect upon the start of the aforesaid campaign period." The ponencia finds "no necessity to apply in the present case this proviso . . . since the present case can be resolved without applying the proviso in Section 11 of RA 8436." I believe, though, that the application of the proviso has to be addressed in the present case if the merits are to be resolved squarely.

It is my position that Director Ladra was correct in considering Eusebio to have become a candidate even for purposes of Section 80, when he filed his certificate of candidacy on December 29, 2003. This inference is very clear from Section 79, which has not been repealed -- expressly or impliedly -- by Republic Act 8436. Eusebio thus violated Section 80.

Be that as it may, the net result is that the acts mentioned in Section 80 cannot be deemed unlawful at any time because of the clause in Section 11 of Republic Act 8436 -- that "unlawful acts or omissions applicable to a candidate shall take effect upon the start of the aforesaid campaign period"; and the fact that by definition the unlawful acts in Section 80 of the OEC cannot be committed during the campaign period. In other words, the foregoing proviso has been impliedly repealed. Hence, there is no effective basis for disqualifying Eusebio.

WHEREFORE, I vote to DISMISS the Petition.

[1] Sec. 79. Definitions.- As used in this Code:

"(a) The term "candidate" refers to any person aspiring for or seeking an elective public office, who has filed a certificate of candidacy by himself or through an accredited political party, aggroupment, or coalition of parties[.]"

[2] P. 29, ponencia.

[3] Section 75 of the Omnibus Election Code.

SEPARATE OPINION

TINGA, J. :

In legal contemplation, petitions for disqualification of election candidates are supposed to be filed, litigated and decided prior to the proclamation of the candidate sought to be disqualified. Any attempt to initiate or intervene in a petition for disqualification must be done before the proclamation of the candidate. Yet Justice Carpio's opinion now rules that even long after the candidate has been proclaimed, any person who professes some interest may be allowed to intervene. This is a ruling that would effectively lengthen the adjudication of petitions for disqualification and encourage the dilatory use of the intervention process even if the original petitioner himself no longer has interest in pursuing the petition. The procedure for disqualification was intended as a finite process, Justice Carpio's opinion now makes it infinite.

I respectfully dissent insofar as Justice Carpio's opinion would resolve the case on the merits, and submit that the petition should be dismissed on the ground of mootness.

The petition for disqualification against respondent Vicente Eusebio was originally filed by petitioner based on two provisions of the Omnibus Election Code (Code), namely Sections 68 and 80. Section 80 declares as unlawful for any person to engage in an election campaign or partisan political activity except during the campaign period, while Section 68 authorizes the disqualification of any candidate who violates Section 80. Moreover, Section 262 of the Code provides that violation of Section 80 constitutes an election offense, which in turn engenders criminal liability.

In the case at bar, petitioner, along with four other candidates in the 2004 Pasig City elections, timely filed the petition for disqualification against respondent Mayor Vicente Eusebio (Eusebio) well before the 2004 elections. The case had still been pending before the COMELEC by the time Eusebio was proclaimed as the winner in the mayoralty elections of that year. After the COMELEC finally dismissed the petition for disqualification, Lanot elevated such decision to the Court for review under Rule 64 of the Rules of Civil Procedure, as was his right. However, none of the four co-petitioners joined Lanot in his petition before this Court. Then, Lanot was tragically assassinated on 13 April 2005.

Had Lanot been joined in his present petition by any of his original co-petitioners, there would be no impediment in deciding this case on the merits. Since they did not, there was nobody left with standing to maintain this present petition upon Lanot's death. However, two persons, Benavides and Raymundo, none of whom showed previous interest to join or intervene in the petition while Lanot was still alive, now seek to be admitted before this Court as, respectively, an intervenor or as a substitute^[1] to Lanot. There is no statutory or procedural rule that would authorize such unconventional steps, yet Justice Carpio's opinion has permitted the same.

What are the fundamental predicates that should be considered in ascertaining whether Benavides and Raymundo should be allowed to intervene and substitute Lanot in the petition at this very late stage before the Court? First, the COMELEC Rules of Procedure state that the petition for disqualification must be filed "any day after the last day for filing of certificates of candidacy but not later than the date of proclamation."^[2] Second, the COMELEC Rules of Procedure also authorize any person "allowed to initiate an action or proceeding" to intervene in such action or proceeding during the trial, and within the discretion before the COMELEC.

Clearly, only persons who are allowed to initiate an action or proceeding are authorized to intervene in the said action or proceeding. Are Benavides or Raymundo "allowed to initiate an action or proceeding" at the point when they sought to intervene? They are not, for the initiation of an action or proceeding may be done "not later than the date of proclamation."

There is indeed a consistent thrust in the law that the petition for disqualification should be resolved with finality before proclamation. It is required that petitions for disqualification be heard summarily after due notice.[3] Section 72 enjoins the COMELEC and the courts to "give priority to cases of disqualification" to the end that a final decision shall be rendered not later than seven days before the election in which the disqualification is sought." [4] While the law concedes that such final decision might be rendered even after the election or the proclamation of the winning candidate,[5] it cannot be doubted that the dominant intent of the law is to see to it that petitions for disqualification are resolved as immediately as possible.

It has been suggested that *Mercado v. Manzano*[6] somehow applies as precedent in permitting the belated participation of Benavides and Raymundo in the proceedings before this Court. Yet a close examination of that case actually bolsters my position.

In *Mercado*, the petition for intervention to a disqualification case was filed eight (8) days after the 11 May 1998 elections. The Court allowed such intervention even though it was filed after the elections, hence the reliance by Justice Carpio's opinion on *Mercado*. However, it should be noted that even though the action for intervention came after the election, it still was lodged three (3) months before a winning candidate was proclaimed. Thus, intervention therein was proper as it was filed by *Mercado* at a time when he was still properly capacitated to initiate an action for disqualification. The Court pronounced:

Private respondent cites [provisions] of Rule 8 of the Rules of Procedure of the COMELEC in support of his claim that petitioner has no right to intervene and, therefore, cannot bring this suit to set aside the ruling denying his motion for intervention: xxx Private respondent argues that petitioner has neither legal interest in the matter in litigation nor an interest to protect because he is "a defeated candidate for the vice-mayorality post of Makati City [who] cannot be proclaimed as the Vice-Mayor of Makati City even if the private respondent be ultimately disqualified by final and executory judgment.

The flaw in this argument is it assumes that, at the time petitioner sought to intervene in the proceedings before the COMELEC, there had already been a proclamation of the results of the election for the vice mayorality contest for Makati City, on the basis of which petitioner came out only second to private respondent. The fact, however, is that there had been no proclamation at that time. Certainly, petitioner had, and still has, an interest in ousting private respondent from the race at the time he sought to intervene. xxx[7]

Mercado clearly laid emphasis on the fact that the attempt at intervention therein was viable as it was made before the proclamation of a winning candidate. Had *Mercado* sought to intervene in the proceedings before the COMELEC after the proclamation, would the intervention have prospered? Considering that the Court expressly took into account that there had been no proclamation yet when the intervention was filed, it stands to reason that the intervention would not have prospered if it was filed after proclamation.

I agree that the right to intervention in a petition for disqualification lies even after election. But the same is terminated upon proclamation, after which there are different remedies available to oust the winning candidate from office, such as an election protest or a quo warranto petition. The availability of remedies other than intervention should guide the Court in adjudging whether there is basis for a liberal application of the rules. In this case at bar, the intervenors were not barred from joining *Lanot's* petition for disqualification, or intervening in the same prior to the proclamation of *Eusebio*. They did not do so. So, they can no longer do what they could have but did not do before proclamation.

It should be kept in mind that a petition for disqualification is intended at canceling the certificate of candidacy of a candidate, as distinguished from nullifying the election that installs that candidate into office. Thus, there are at most two positive reliefs that can be obtained in a petition for disqualification — the cancellation of the certificate of candidacy; and if the election had already taken place, the injunction against the proclamation of the

controversial candidate. This is evident from Section 6 of Rep. Act No. 6646, which reads:

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 shall continue with the trial and 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.

It is telling that the injunctive relief which the COMELEC may authorize in a disqualification case is the suspension of the proclamation of the candidate in question. This qualification further militates that the period for the successful initiation or intervention in a petition for disqualification terminates upon the proclamation of the said candidate. It is also revealing that there stands no right of intervention by any third party to the pending disqualification case, the allowance of such intervention being dependent on the sound discretion of the COMELEC or the court concerned.

There is another crucial reason why a limitation should be imposed on attempts to intervene in a disqualification petition after the proclamation of a winning candidate. Without such proscription, any person or political party would be able to maintain a petition for disqualification through intervention even after the original petitioners had withdrawn the petition, lost interest in pursuing the petition, or died.

For example, during the campaign period, A, a candidate for city mayor, filed a petition for disqualification against B, the incumbent running for re-election, for violations of the Omnibus Election Code. The petition had not yet been finally decided when B was proclaimed as the clear winner against A. Out of a desire for peace within the city, A decided to concede B's victory and to withdraw the petition for disqualification — a most desirable scenario even if perhaps atypical. However, following Justice Carpio's opinion, a person such as C, a non-candidate who nonetheless is an estranged creditor of B, could very well intervene and substitute in behalf of A and pursue the disqualification case. There is likewise no stopping a D or an E to eventually follow suit even if C eventually dies or loses interest in pursuing the protest. Justice Carpio's opinion would allow a petition for disqualification to be litigated in perpetuity, long after the proclamation of a candidate, and even after the parties who filed the petition have since lost interest in continuing the same.

Let us further assume, for the sake of argument, that Lanot had not died but that he had opted not to assail the challenged rulings of the COMELEC. Benavides and Raymundo, desirous to see Eusebio disqualified even though they had not participated in the disqualification case, filed the petition for certiorari assailing the COMELEC rulings. Such a course of action is instinctively awry, Benavides and Raymundo clearly not having standing to challenge the COMELEC rulings. Yet following Justice Carpio's opinion's reasoning, Benavides and Raymundo would actually be authorized to file and litigate the certiorari petition before this Court. After all, Justice Carpio's opinion makes it clear that the only requisites for intervention in a petition for disqualification are that the intervenors are citizens of voting age or a duly registered party, organization or coalition of political parties, and that no final judgment has yet been rendered.

The way to preclude abuse or anomalies to the right to intervene in disqualification cases is to stress a clear and equitable rule that intervention after proclamation should not be permitted, just as the filing of a petition for disqualification after proclamation is prohibited. In other words, the proclamation as a bench mark operates as a bar to the filing of the petition for disqualification as well as to any motion for intervention therein. Such an interpretation, which avoids inconvenient or absurd results, is desirable considering the principle in statutory construction that "where there is ambiguity, such interpretation as will avoid inconvenience and absurdity is to be adopted."

There have been instances where the Court has adopted a liberal stance in allowing for the substitution of a deceased party to an election protest, as was authorized in cases such as *De Mesa v. Mencias*[8] and *Lomugdang v. Javier*. [9] However, an election protest stands as a different specie from a petition for disqualification. Petitions for disqualifications are supposed to be resolved even prior to the election itself, while election protests are necessarily commenced only after the election is held. It would be improper to rely on either *De Mesa* or *Lomugdang* to justify the sought-for interventions in this case. These cases do establish the right to substitution of an election protestee/protestant, yet it should be noted that the parties who attempted to substitute in these cases were real parties in interest, defined in *Poe v. Arroyo* as "those who would be benefited or injured by the judgment, and the party who is entitled to the avails of the suit." In fact, if we were to deem the doctrines on substitution in protest cases as similarly controlling in this case, the intervenors would have been denied the right to substitute the deceased Lanot, following the latest precedent on that issue, *Poe v. Arroyo*. The Court as the Presidential Electoral Tribunal held therein:

Rule 3, Section 16 is the rule on substitution in the Rules of Court. This rule allows substitution by a legal representative. It can be gleaned from the citation of this rule that movant/intervenor seeks to appear before this Tribunal as the legal representative/substitute of the late protestant prescribed by said Section 16. However, in our application of this rule to an election contest, we have every time ruled that a public office is personal to the public officer and not a property transmissible to the heirs upon death. Thus, we consistently rejected substitution by the widow or the heirs in election contests where the protestant dies during the pendency of the protest. In *Vda. de De Mesa v. Mencias*, we recognized substitution upon the death of the protestee but denied substitution by the widow or heirs since they are not the real parties in interest. Similarly, in the later case of *De la Victoria v. Commission on Elections*, we struck down the claim of the surviving spouse and children of the protestee to the contested office for the same reason. Even in analogous cases before other electoral tribunals, involving substitution by the widow of a deceased protestant, in cases where the widow is not a real party in interest, we denied substitution by the wife or heirs.

This is not to say that death of the protestant necessarily abates the pending action. We have held as early as *Vda. de De Mesa* (1966) that while the right to a public office is personal and exclusive to the public officer, an election protest is not purely personal and exclusive to the protestant or to the protestee such that the death of either would oust the court of all authority to continue the protest proceedings. Hence, we have allowed substitution and intervention but only by a real party in interest. A real party in interest is the party who would be benefited or injured by the judgment, and the party who is entitled to the avails of the suit. In *Vda. de De Mesa v. Mencias* and *Lomugdang v. Javier*, we permitted substitution by the vice-mayor since the vice-mayor is a real party in interest considering that if the protest succeeds and the protestee is unseated, the vice-mayor succeeds to the office of the mayor that becomes vacant if the one duly elected cannot assume office. In contrast, herein movant/intervenor, Mrs. FPJ, herself denies any claim to the august office of President. Thus, given the circumstances of this case, we can conclude that protestant's widow is not a real party in interest to this election protest.

Could Raymundo or Benavides be considered as "real parties in interest", conformably to the standard set by the Court in actions for substitution in election protests? No. Raymundo was not even a candidate in the 2004 elections. While Benavides ran and lost for mayor in the said election, neither would she possess the legal interest required for substitution in election protest cases, as she would not succeed into office should Eusebio be disqualified.

Ultimately, *De Mesa*, *Lomugdang* and *Poe* are irrelevant to this case, as they involve election protests and not disqualification cases. As the ponente would say, the interests that lie in disqualification cases, which extend to the prevention of an unqualified candidate from sitting in office, are consequential enough that any voter or political party or organization is allowed to file a petition for disqualification. Granted. However, should it

necessarily mean that there should be no limits as to when petitions for disqualification may in effect be revived or given new life through intervention?

Finally, I find it distressing that Justice Carpio's opinion, in resolving the petition on the merits in favor of Eusebio, has also chosen to preclude the continuation of any criminal action against Eusebio, concluding as it does that no election offense was committed by the respondent. The matters elevated for review before the Court concerned the electoral aspect of a petition for disqualification under Section 80 of the Omnibus Election Code. Such petition has two aspects' the electoral aspect and the criminal aspect. The electoral aspect pertains to whether the candidate should be disqualified from the election, while the criminal aspect is concerned whether the same candidate is guilty of an election offense.

The distinction between the electoral and criminal aspects bear pointing out. There are different parties-in-interest who are capacitated to file suit regarding the electoral aspect, as opposed to the criminal aspect. Section 2, Rule 25 of the COMELEC Rules of Procedure authorizes "any citizen of voting age, or duly registered political party, organization or coalition of political parties" in filing a petition for disqualification. On the other hand, under Section 1, Rule 34 of the COMELEC Rules of Procedure, it is the COMELEC which has "the exclusive power to conduct preliminary investigation of all election offenses punishable under the election laws and to prosecute the same"[10] Further, while election offenses prescribe in five (5) years after their commission,[11] the petition for disqualification must be filed "any day after the last day for filing of certificates of candidacy but not later than the date of proclamation." [12]

Both the electoral and the criminal aspects come to fore in this case. The pending legal incidents were initiated by a petition for disqualification filed by Lanot and four other candidates in the 2004 Pasig City elections. Subsequently, the COMELEC initiated an investigation as to whether respondent Eusebio should be charged with an election offense. Notably, the COMELEC has yet to find cause to discharge Eusebio of his possible criminal liability for committing an election offense. I submit that by dismissing the present petition on the ground of mootness, the COMELEC would retain the power and the duty to ascertain whether Eusebio may indeed be criminally liable.

There is a public interest in seeing that candidates who commit election offenses which also constitute grounds for disqualification, are accordingly penalized and disqualified from office. I submit that this interest may be protected in the criminal aspect of the corresponding petition for disqualification. Unlike in the electoral aspect wherein it is the individual petitioners who have legal interest in maintaining the suit, it is the COMELEC itself which has the legal interest to pursue the criminal aspect, as it is the poll body which has exclusive power to investigate and to prosecute election offenses. Should the petitioners die or withdraw from the petition for disqualification, the COMELEC may still pursue the criminal aspect. If the candidate in question is found guilty of the election offense, he may be removed from office as a result, as well as face the corresponding jail term.

The COMELEC in this case did observe that the evidence was strong that respondent Eusebio was guilty of committing election offenses.[13] It is unfortunate that Justice Carpio's opinion, in deciding the petition on the merits, has arrived at the contrary conclusion that "Eusebio clearly did not violate Section 80 of the Omnibus Election Code," and thus precluding further investigation or prosecution of Eusebio. This conclusion was needlessly arrived at since the death of Lanot should have already mooted the petition for disqualification without prejudice to the right of the Comelec to investigate or prosecute Eusebio for election offenses.

I VOTE to DISMISS the petition, it having become moot and academic.

[1] A brief comment on Raymundo's Motion for Substitution. I see no basis in the Rules of Court for such

substitution to be allowed on account of Lanot's death. It is the heirs of the deceased who may be allowed to be substituted for the deceased. See 1997 RULES OF CIVIL PROCEDURE, Rule 3, Sec. 16. Apparently though, Justice Carpio's opinion is ready to equate Raymundo's attempt at "substitution" as an action for "intervention", the latter being a distinct remedial course of action.

[2] See COMELEC RULES OF PROCEDURE, Rule 2, Sec. 2; emphasis supplied. See also Section 5(B)(1), Comelec Resolution No. 6452, which was in effect at the time of the 2004 elections.

[3] See COMELEC RULES OF PROCEDURE, Rule 25, Sec. 3. See also Section 5(B)(8), Comelec Resolution No. 6452.

[4] See Sec. 72, Omnibus Election Code.

[5] See Sec. 72, Omnibus Election Code and Sec. 6, Rep. Act No. 6646.

[6] 367 Phil. 132 (1999).

[7] Id. at 141-142. Emphasis supplied.

[8] 124 Phil. 1187 (1966).

[9] 128 Phil. 424 (1967).

[10] See Sec. 1, Rule 34., COMELEC Rules of Procedure. Except as may otherwise be provided by law.

[11] See Sect. 267, Omnibus Election Code

[12] See Sec. 2, Rule 25, Comelec Rules of Procedure; emphasis supplied. See also Sec. 5(B)(1), Comelec Resolution No. 6452, which was in effect at the time of the 2004 elections.

[13] See Draft Ponencia, p. 7.

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