

JOY CHRISMA B. LUNA, PETITIONER, VS. COMMISSION ON ELECTIONS, TOMAS LAYAO, SOLOMON LALUGAN III, NELIA LAZAGA, ANTHONY LAYAO, CIPRIANO LAPEZ, JR., VICTORIA LAYAO, MODERNO LAPEZ, ...

G.R. NO. 165983. April 24, 2007

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before this Court is a petition for certiorari^[1] with prayer for the issuance of a temporary restraining order, writ of preliminary injunction or status quo order questioning the 4 June 2004 Resolution of the Commission on Elections (COMELEC) First Division and the 22 November 2004 Resolution of the COMELEC En Banc in SPA Case No. 04-306. The 4 June 2004 Resolution denied due course to the substitution of petitioner Joy Chrisma B. Luna (Luna) for Hans Roger Luna (Hans Roger) and declared the substitution invalid. The 22 November 2004 Resolution denied Luna's motion for reconsideration.

The Facts

On 15 January 2004, Luna filed her certificate of candidacy for the position of vice-mayor of Lagayan, Abra as a substitute for Hans Roger, who withdrew his certificate of candidacy on the same date. Ruperto Blanco, Election Officer of Lagayan, Abra removed the name of Hans Roger from the list of candidates and placed the name of Luna.

On 20 April 2004, private respondents Tomas Layao, Solomon Lalugan III, Nelia Lazaga, Anthony Layao, Cipriano Lapez, Jr., Victoria Layao, Moderno Lapez, Rodrigo Pariñas, and Eugenio Caber Donato (private respondents) filed a petition for the cancellation of the certificate of candidacy or disqualification of Luna. Private respondents alleged that Luna made a false material representation in her certificate of candidacy because Luna is not a registered voter of Lagayan, Abra but a registered voter of Bangued, Abra. Private respondents also claimed that Luna's certificate of candidacy was not validly filed because the substitution by Luna for Hans Roger was invalid. Private respondents alleged that Hans Roger was only 20 years old on election day and, therefore, he was disqualified to run for vice-mayor and cannot be substituted by Luna.^[2]

The COMELEC's Ruling

In the 4 June 2004 Resolution, the COMELEC First Division granted the petition and denied due course to the substitution of Luna for Hans Roger. The COMELEC First Division ruled that, while Luna complied with the procedural requirements for substitution, Hans Roger was not a valid candidate for vice-mayor. The COMELEC First Division pointed out that Hans Roger, being underage,^[3] did not file a valid certificate of candidacy and, thus, Hans Roger was not a valid candidate for vice-mayor who could be substituted by Luna. The COMELEC First Division also ruled that Luna was not a registered voter of Lagayan, Abra and that this was sufficient to

disqualify Luna from running as vice-mayor.

On 28 June 2004, Luna filed a motion for reconsideration with the COMELEC En Banc. Luna added that the 4 June 2004 Resolution was issued in violation of her right to due process because she was not given the opportunity to present evidence on her behalf with the COMELEC First Division.

In the 22 November 2004 Resolution, the COMELEC En Banc denied the motion for reconsideration and affirmed with modification the 4 June 2004 Resolution. The COMELEC En Banc affirmed the finding that Hans Roger, being underage, may not be validly substituted by Luna. The COMELEC En Banc also ruled that Luna's right to due process was not violated because Luna was notified of the petition and was given the opportunity to be heard. However, the COMELEC En Banc ruled that Luna was a registered voter of Lagayan, Abra.

Hence, this petition.

In a Resolution dated 11 January 2005, we required the parties to maintain the status quo prevailing before the issuance of the assailed COMELEC resolutions pending the resolution of this petition.[4]

The Issues

Luna raised the following issues:

- Whether the COMELEC committed grave abuse of discretion when it ruled that there was no violation of Luna's right to due process; and
- Whether the COMELEC committed grave abuse of discretion when it ruled that there was no valid substitution by Luna for Hans Roger.

The Court's Ruling

The petition is partly meritorious.

Luna's Right to Due Process was not Violated

Luna contends that her right to due process was violated because she was not given the opportunity to present her evidence before the COMELEC First Division.

Under Rule 23 of the 1993 COMELEC Rules of Procedure, a petition to deny due course to or cancel a certificate of candidacy shall be heard summarily after due notice. The law mandates that the candidates must be notified of the petition against them and should be given the opportunity to present evidence on their behalf.[5] This is the essence of due process.

In this case, the COMELEC En Banc stated that the records showed that three days after the petition was filed, the Provincial Election Supervisor, as hearing officer, with the assistance of the Philippine National Police Provincial Command, tried to personally serve a copy of the petition to Luna. But Luna refused to formally receive the petition. On 26 April 2004, the Office of the Provincial Election Supervisor sent the notice via registered mail and still Luna did not file an answer.

The Court finds that Luna's right to due process was not violated. The COMELEC notified Luna of the petition filed against her and Luna was given the opportunity to present evidence on her behalf. This constitutes compliance with the requirements of due process.

Substitution of Luna for Hans Roger was Valid

Luna contends that Hans Roger filed a valid certificate of candidacy and, subsequently, upon Hans Roger's

withdrawal of his certificate of candidacy, there was a valid substitution by Luna.

On the other hand, the COMELEC ruled that Hans Roger, being under age, could not be considered to have filed a valid certificate of candidacy and, therefore, is not a valid candidate who could be substituted by Luna.

When a candidate files his certificate of candidacy, the COMELEC has a ministerial duty to receive and acknowledge its receipt. Section 76 of the Omnibus Election Code (Election Code) provides:

Sec. 76. Ministerial duty of receiving and acknowledging receipt.- The Commission, provincial election supervisor, election registrar or officer designated by the Commission or the board of election inspectors under the succeeding section shall have the ministerial duty to receive and acknowledge receipt of the certificate of candidacy.

In this case, when Hans Roger filed his certificate of candidacy on 5 January 2004,[6] the COMELEC had the ministerial duty to receive and acknowledge receipt of Hans Roger's certificate of candidacy. Thus, the COMELEC had the ministerial duty to give due course to Hans Roger's certificate of candidacy.[7]

On 15 January 2004, Hans Roger withdrew his certificate of candidacy. The Election Code allows a person who has filed a certificate of candidacy to withdraw the same prior to the election by submitting a written declaration under oath.[8] There is no provision of law which prevents a candidate from withdrawing his certificate of candidacy before the election.[9]

On the same date, Luna filed her certificate of candidacy as substitute for Hans Roger. Section 77 of the Election Code prescribes the rules on substitution of an official candidate of a registered political party who dies, withdraws, or is disqualified for any cause after the last day for the filing of certificate of candidacy. Section 77 of the Election Code provides:

Sec. 77. Candidates in case of death, disqualification or withdrawal of another. - If after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified. The substitute candidate nominated by the political party concerned may file his certificate of candidacy for the office affected in accordance with the preceding sections not later than mid-day of election day of the election. If the death, withdrawal or disqualification should occur between the day before the election and mid-day of election day, said certificate may be filed with any board of election inspectors in the political subdivision where he is a candidate, or, in the case of candidates to be voted for by the entire electorate of the country, with the Commission.

Since Hans Roger withdrew his certificate of candidacy and the COMELEC found that Luna complied with all the procedural requirements for a valid substitution,[10] Luna can validly substitute for Hans Roger.

The COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in declaring that Hans Roger, being under age, could not be considered to have filed a valid certificate of candidacy and, thus, could not be validly substituted by Luna. The COMELEC may not, by itself, without the proper proceedings, deny due course to or cancel a certificate of candidacy filed in due form.[11] In *Sanchez v. Del Rosario*,[12] the Court ruled that the question of eligibility or ineligibility of a candidate for non-age is beyond the usual and proper cognizance of the COMELEC.

Section 74[13] of the Election Code provides that the certificate of candidacy shall state, among others, the date of birth of the person filing the certificate. Section 78[14] of the Election Code provides that in case a person filing a certificate of candidacy has committed false material representation, a verified petition to deny due course to or cancel the certificate of candidacy of said person may be filed at any time not later than 25 days from the time of

filing of the certificate of candidacy.

If Hans Roger made a material misrepresentation as to his date of birth or age in his certificate of candidacy, his eligibility may only be impugned through a verified petition to deny due course to or cancel such certificate of candidacy under Section 78 of the Election Code.

In this case, there was no petition to deny due course to or cancel the certificate of candidacy of Hans Roger. The COMELEC only declared that Hans Roger did not file a valid certificate of candidacy and, thus, was not a valid candidate in the petition to deny due course to or cancel Luna's certificate of candidacy. In effect, the COMELEC, without the proper proceedings, cancelled Hans Roger's certificate of candidacy and declared the substitution by Luna invalid.

It would have been different if there was a petition to deny due course to or cancel Hans Roger's certificate of candidacy. For if the COMELEC cancelled Hans Roger's certificate of candidacy after the proper proceedings, then he is no candidate at all and there can be no substitution of a person whose certificate of candidacy has been cancelled and denied due course.^[15] However, Hans Roger's certificate of candidacy was never cancelled or denied due course by the COMELEC.

Moreover, Hans Roger already withdrew his certificate of candidacy before the COMELEC declared that he was not a valid candidate. Therefore, unless Hans Roger's certificate of candidacy was denied due course or cancelled in accordance with Section 78 of the Election Code, Hans Roger's certificate of candidacy was valid and he may be validly substituted by Luna.

WHEREFORE, we PARTLY GRANT the petition. We AFFIRM the ruling of the COMELEC En Banc that there was no violation of petitioner Joy Chrisma B. Luna's right to due process. We SET ASIDE the ruling of the COMELEC En Banc that the substitution by petitioner Joy Chrisma B. Luna for Hans Roger Luna was invalid. Petitioner Joy Chrisma B. Luna validly substituted for Hans Roger Luna.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr., and Nachura, JJ., concur.

[1] Under Rule 65 of the Rules of Court.

[2] Under Section 39(c) of Republic Act No. 7160, also known as the "Local Government Code of 1991," candidates for the position of vice-mayor of independent component cities, component cities, or municipalities must be at least twenty-one (21) years of age on election day.

[3] The COMELEC First Division stated that Hans Roger was born on 1 January 1984 and that on election day, 10 May 2004, Hans Roger was only 20 years of age.

[4] Rollo, p. 56.

[5] Cipriano v. COMELEC, G.R. No. 158830, 10 August 2004, 436 SCRA 45.

[6] Under COMELEC Resolution No. 6479 (In the Matter of Further Extending the Deadline for the Filing of the Certificates of Candidacy for all Positions in the May 2004 National and Local Elections and the Extension of the Deadline to File Manifestations to Participate in the Party List Elections), the deadline for the filing of certificates of candidacy for all positions in the May 2004 National and Local Elections was extended from 2 January 2004 to 5 January 2004.

[7] Cipriano v. COMELEC, supra note 5.

[8] Section 73, OMNIBUS ELECTION CODE.

[9] Monsale v. Nico, 83 Phil. 758 (1949).

[10] Rollo, p. 49.

[11] Cipriano v. COMELEC, supra note 5.

[12] 111 Phil. 733 (1961).

[13] Section 74 of the Election Code provides:

Sec. 74. Contents of Certificate of Candidacy. - The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge. x x x x (Emphasis supplied)

[14] Section 78 of the Election Code provides:

Sec. 78. Petition to deny due course to or cancel a certificate of candidacy. - A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the elections.

[15] Miranda v. Abaya, 370 Phil. 642 (1999).

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