

MICHAEL F. PLANAS, PETITIONER, VS. COMMISSION ON ELECTIONS, MATIAS V. DEFENSOR, JR. AND ANNA LIZA C. CABOCHAN, RESPONDENTS.

G.R. NO. 167594. March 10, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Being assailed by petitioner Michael F. Planas (Planas) is the March 11, 2005 Resolution of the Commission on Elections (COMELEC) En Banc in SPA 04-255, "In Re: Petition to Deny Due Course and/or Cancel the Certificate of Candidacy of Congressional Candidate Anna Liza C. Cabochan."

The following facts are not disputed.

On January 5, 2004, Planas filed his certificate of candidacy for representative of the Third Congressional District of Quezon City under the Koalisyon ng Nagkakaisang Pilipino—Laban ng Demokratikong Pilipino.

Also on January 5, 2004, Anna Liza C. Cabochan (Cabochan) filed her certificate of candidacy [1] for the same position under the Liberal Party. Her certificate of candidacy dated January 5, 2004 appears to have been notarized on even date by one Atty. Merito L. R. Fernandez of Quezon City and recorded as Document No. 03, Page No. 1, Book No. I, Series of 2004. The stamped entries on said document show that, among other things, Atty. Fernandez's commission as Notary Public was "Until December 31, 2003."

On January 12, 2004, Ramil T. Cortiguerra (Cortiguerra), a registered voter of Quezon City, filed before the COMELEC National Capital Region (NCR) a "Petition to Deny Due Course and/or Cancellation of the Certificate of Candidacy of Congressional Candidate Anna Liza C. Cabochan," [2] which was docketed as Case No. SPA (NCR-RED) No. A04-006, alleging that Cabochan's certificate suffered from a serious and material defect as it was notarized by a Notary Public whose commission had already expired, in violation of Section 73 of the Omnibus Election Code [3] and Section 1 of COMELEC En Banc Resolution No. 6453. [4]

On January 15, 2004, Cabochan withdrew her certificate of candidacy and Matias V. Defensor, Jr. (Defensor) filed his in substitution of Cabochan.

During the January 22, 2004 hearing on Cortiguerra's petition, counsels for both parties agreed on the following issues:

- Whether or not the Certificate of Candidacy of respondent Anna Liza Cabochan shall be denied due course or cancelled; and
- Whether or not the substitution of Mr. Matias Defensor for respondent Anna Liza Cabochan who has withdrawn her Certificate of Candidacy last January 15, 2004 is valid. [5]

By Memorandum [6] dated April 15, 2004 addressed to the COMELEC En Banc, Atty. Esmeralda Amora-Ladra, Acting Director IV of the COMELEC NCR Office, forwarded to the COMELEC her RECOMMENDATION [7]

that the certificate of Cabochan be denied due course and ordered cancelled and that the substitution of Defensor for Cabochan be accordingly denied due course and declared invalid.

In the meantime, the COMELEC En Banc, on the recommendation of the COMELEC Law Department, issued on April 20, 2004 Minute Resolution No. 04-0582 [8] in "In the Matter of the Memorandum of Commissioner Florentino Tuazon, Jr., Commissioner-in-Charge, Law Department, Relative to the Memoranda of the Law Department on the withdrawal of Certificate of Candidacy, Acceptance and Nomination of Substitute Candidate, Additional Nickname and Correction of Entry of Name," giving due course to, among other things, the certificate of candidacy of Cabochan and that of Defensor, Cabochan's substitute.

The petition of Cortiguerra in which the COMELEC NCR Acting Director recommended the grant thereof was docketed as SPA No. 04-255 and lodged at the COMELEC First Division.

In the meantime, the national elections were held as scheduled on May 10, 2004.

On May 13, 2004, Planas filed before the Quezon City Board of Canvassers a Petition for the Suspension of the Canvassing of Votes in favor of Defensor who appeared to be leading the congressional race, citing the above-stated April 15, 2004 memorandum-recommendation of the NCR Acting Director.

On May 14, 2004, the COMELEC First Division, by Resolution [9] of May 14, 2004, granted Cortiguerra's petition and accordingly denied due course and cancelled Cabochan's Certificate of Candidacy and declared invalid Defensor's substitution for her.

On May 15, 2004, Planas' counsel submitted to the Quezon City Board of Canvassers a copy of the above-said May 14, 2004 Resolution of the COMELEC First Division on Cortiguerras's petition in SPA No. 04-255 and moved that the votes in favor of Defensor be no longer read. His motion was, however, denied on the ground that there was yet no order from the COMELEC Central Office disqualifying Defensor.

Planas thereupon filed on May 17, 2004 with the COMELEC First Division in SPA No. 04-255 a "Petition for Intervention," [10] and a "Most Urgent Petition/ Motion to Suspend Canvass and Proclamation," [11] invoking said Division's May 14, 2004 Resolution granting Cortiguerra's petition and accordingly denying due course to Defensor's substitution for Cabochan.

Also on May 17, 2004, Defensor was proclaimed as the winning candidate for the congressional seat of the Third District of Quezon City. [12]

On May 18, 2004, Cabochan filed a Motion for Reconsideration [13] of the May 14, 2004 Resolution of the COMELEC First Division. On even date, Defensor filed a Motion to Intervene [14] and Motion for Reconsideration-in-Intervention [15] before the same Division. Both Cabochan's and Defensor's motions alleged that, among other things, the First Division cannot nullify the En Banc Resolution "firstly because it has no authority or jurisdiction to do so, for it is the COMELEC En Banc that has jurisdiction to set aside a decision of a COMELEC Division;" and "secondly, because Commissioners Javier, Borra and Garcillano, who signed the COMELEC First Division resolution also signed the COMELEC En Banc Resolution of April 20, 2004."

By Order [16] of May 22, 2004, the COMELEC First Division, acting on Cabochan's Motion for Reconsideration of its May 14, 2004 Resolution, directed the elevation of the motion to the COMELEC En Banc.

On March 11, 2005, the COMELEC En Banc issued the challenged Resolution [17] reversing the May 14, 2004 Resolution of the COMELEC First Division.

Hence, the present petition of Planas (hereinafter referred to as petitioner), he arguing that the COMELEC En Banc acted with grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that:

I

x x x IT IS ALREADY OUSTED OF JURISDICTION OVER THE CASE, AND THAT THE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET) HAS JURISDICTION OVER THE SAME.

II

x x x THE CERTIFICATE OF CANDIDACY OF PRIVATE RESPONDENT CABOCHAN IS VALID, AND THAT THE SUBSEQUENT SUBSTITUTION OF PRIVATE RESPONDENT CABOCHAN BY PRIVATE RESPONDENT DEFENSOR AS CANDIDATE FOR MEMBER OF THE HOUSE OF REPRESENTATIVES FOR THE 3RD CONGRESSIONAL DISTRICT OF QUEZON CITY IS LEGAL. [18]

The issues are thus 1) whether the COMELEC was divested of its jurisdiction by virtue of Defensor's proclamation and assumption of office as member of the House of Representatives, and 2) if in the negative, whether Cabochan was disqualified as a candidate and, therefore, Defensor's substitution for her was invalid.

Respecting the first issue, petitioner cites Section 6 of Republic Act No. 6646 (ELECTORAL REFORMS LAW OF 1987) which 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 and underscoring supplied)

Petitioner argues that since the COMELEC First Division May 14, 2004 Resolution invalidating the Certificates of Candidacy of Cabochan and Defensor "did not attain finality before the May 10, 2004 elections because [said Resolution] was rendered subsequent to the day of the elections," the COMELEC was never divested of jurisdiction over the case by the mere fact of the proclamation of Defensor as winner.

In another vein, petitioner, citing *Codilla, Sr. v. Hon. de Venecia*, [19] contends that the House of Representatives Electoral Tribunal (HRET) has no jurisdiction to review resolutions or decisions of the COMELEC, whether issued by the division or en banc. And he submits that the April 20, 2004 Minute Resolution of the COMELEC En Banc is null and void as it was decided ahead of the COMELEC First Division and thus violative of the Constitution which requires that all election cases shall be heard and decided in division.

Respecting the second issue, petitioner invokes the provisions of the Revised Administrative Code, specifically Section 250 which requires notaries public to "affix to all acknowledgements taken and certified by them, according to law, a statement of the date on which their commissions expire." Since the notarial commission of Atty. Merito Fernandez was valid only until December 31, 2003, petitioner concludes that Cabochan's certificate of candidacy was invalid, and consequently Defensor's substitution for her, citing *Miranda v. Abaya*. [20]

The general rule is that the proclamation of a congressional candidate divests COMELEC of jurisdiction in favor of the HRET. This rule, however, is not without exception. As held in *Mutuc, et al. v. COMELEC, et al.*, [21]

x x x It is indeed true that after proclamation the usual remedy of any party aggrieved in an election is to be found in an election protest. But that is so only on the assumption that there has been a valid proclamation. Where as in the case at bar the proclamation itself is illegal, the assumption of office cannot in any way affect the basic issues.

x x x [22] (Emphasis and underscoring supplied)

In Codilla[23] which petitioner relies upon to support his thesis that it is the COMELEC, not the HRET, which has jurisdiction over the case, the proclamation of Codilla, who garnered the highest number of votes but who was facing charges of many counts of indirect solicitation of votes, was ordered suspended even if he had not yet been summoned to answer the charges. Codilla thereupon filed a motion to lift the suspension order. The COMELEC Second Division, without resolving Codilla's pending motion, issued a resolution declaring his disqualification and directing the immediate proclamation of the candidate who garnered the highest number of votes. Despite Codilla's timely filing of a Motion for Reconsideration, the votes cast for Codilla were declared stray and Locsin, who garnered the second highest number of votes, was proclaimed winner.

Held this Court:

x x x x

. . . [A]t the time of the proclamation of respondent Locsin, the validity of the Resolution of the COMELEC Second Division [disqualifying Codilla] was seasonably challenged by [Codilla] in his Motion for Reconsideration. The issue was still within the exclusive jurisdiction of the COMELEC en banc to resolve. Hence, the HRET cannot assume jurisdiction over the matter.[24]

x x x x (Emphasis and underscoring supplied)

In other words, at the time Codilla was declared disqualified by the Second Division and his rival Locsin who garnered the second highest number of votes was proclaimed, the Division Resolution which declared Codilla's disqualification was not yet final, as Codilla's Motion for Reconsideration thereof had yet to be acted upon by the COMELEC En Banc which had exclusive jurisdiction to resolve the same. The HRET could not thus assume jurisdiction as Locsin's proclamation was invalid.

In the case at bar, at the time of the proclamation of Defensor who garnered the highest number of votes, the Division Resolution invalidating his certificate of candidacy was not yet final, hence, he had at that point in time remained qualified. Therefore, his proclamation was valid or legal.

Following Mutuc then, as at the time of Defensor's proclamation the denial of his COC due course was not yet final, his proclamation was valid or legal and as he in fact had taken his oath of office and assumed his duties as representative, the COMELEC had been effectively divested of jurisdiction over the case.

WHEREFORE, the instant petition is DISMISSED.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Guitierrez, Carpio, Austria-Martinez, Corona, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.

[1] COMELEC records, p. 7.

[2] Id. at 1-6.

[3] Section 73. Certificate of Candidacy. — No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed herein.

x x x x

[4] Section 1. Certificate of Candidacy. —

a) No person shall be elected President, Vice-President, Senator, member of the House of Representatives,

Provincial, City or Municipal official unless he files personally or his duly authorized representative a sworn certificate of candidacy with the respective offices provided under Section 3 hereof, in the form prescribed by the Commission and within the period fixed herein.

x x x x

[5] COMELEC records, p. 14.

[6] Rollo, p. 36.

[7] Id. at 37-54.

[8] COMELEC records, pp. 59-61.

[9] COMELEC records, pp. 50-56.

[10] Id. at 35-38.

[11] Id. at 40-43.

[12] Id. at 94.

[13] Id. at 57-69.

[14] Id. at 71-74.

[15] Id. at 75-87.

[16] Id. at 91.

[17] Id. at 106-109.

[18] Rollo, pp. 13-14.

[19] 442 Phil. 139 (2002).

[20] 370 Phil. 642 (1999).

[21] 130 Phil. 663 (1968). Cited in Agpalo, Comments on the Omnibus Election Code 524 (2004 Ed.)

[22] Id. at 672.

[23] Supra note 19 at 187.

[24] Ibid.

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