

FLORANTE S. QUIZON, Petitioner, vs. HON. COMMISSION ON ELECTIONS (SECOND DIVISION), MANILA, ATTY. ARNULFO H. PIOQUINTO (ELECTION OFFICER, ANTIPOLO CITY) and ROBERTO VILLANUEVA P...

G.R. No. 177927. February 15, 2008

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

This petition for mandamus with prayer for preliminary injunction seeks to compel the Commission on Elections (COMELEC) Second Division to resolve the petition and supplemental petition for disqualification and cancellation of certificate of candidacy filed by Florante S. Quizon against Roberto V. Puno.

The facts are as follows:

Petitioner Quizon and private respondent Puno were congressional candidates during the May 14, 2007 national and local elections.

On April 17, 2007, Quizon filed a Petition for Disqualification and Cancellation of Certificate of Candidacy[1] against Puno docketed as SPA-07-290. Quizon alleged that Puno is not qualified to run as candidate in Antipolo City for failure to meet the residency requirement prior to the day of election; and that Puno's claim in his Certificate of Candidacy (COC) that he is a resident of 1906 Don Celso Tuazon, Valley Golf Brgy. De la Paz, Antipolo City for four years and six months before May 14, 2007 constitutes a material misrepresentation since he was in fact a resident of Quezon City.

On April 24, 2007, Quizon filed a Supplement[2] to the petition claiming that Puno cannot validly be a candidate for a congressional seat in the First District of Antipolo City since he indicated in his COC that he was running in the First District of the Province of Rizal which is a different legislative district.[3]

Subsequently, concerned residents of the First District of Antipolo City wrote a letter dated April 27, 2007[4] seeking clarification from the COMELEC on the legal and political implications of the COC of Puno, who was seeking public office in the First District of the Province of Rizal but waging his political campaign in the City of Antipolo, which is a separate and distinct legislative district. They prayed that Puno's COC be declared as invalid and that the same be cancelled.

On June 5, 2007, Quizon filed this Petition for Mandamus alleging that the COMELEC had not rendered a judgment on the above-mentioned petitions and that the unreasonable delay in rendering judgment deprived him of his right to be declared as the winner and assume the position of member of the House of Representatives.[5]

Meanwhile, on July 31, 2007, the COMELEC Second Division promulgated its Resolution, thus:

WHEREFORE, premises considered, the instant Petition for Disqualification and Cancellation of the Certificate of Candidacy of respondent Roberto V. Puno is hereby DISMISSED. Respondent is a resident of

the 1st District of Antipolo City, and is thus qualified to run as a Member of the House of Representatives of the same district.[6]

Quizon filed a motion for reconsideration with the COMELEC En Banc which remains unresolved up to this date.

In his Comment, Puno argues that the petition for mandamus was mooted by the July 31, 2007 Resolution of the COMELEC Second Division. He also alleged that the petition must be dismissed for the act sought to be performed is a discretionary and not a ministerial duty; and for failure of Quizon to show that he is entitled to the writ.

The Office of the Solicitor General agrees that the petition for mandamus was mooted by the July 31, 2007 Resolution of the COMELEC Second Division. It likewise posits that any question regarding Puno's qualifications now pertains to the House of Representatives Electoral Tribunal (HRET).

In the instant petition, Quizon prays that the Court order the COMELEC to resolve his pending petition for disqualification.

We dismiss the petition.

The principal function of the writ of mandamus is to command and to expedite, not to inquire and to adjudicate.[7] Here, Quizon prayed that COMELEC be ordered to resolve the petition for disqualification. However, pending resolution of the instant petition for mandamus, the COMELEC issued its Resolution on the petition for disqualification rendering the instant case moot.

A moot case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness. However, Courts will decide cases, otherwise moot and academic, if: first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount public interest is involved; third, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and fourth, the case is capable of repetition yet evading review,[8] none of which are present in the instant case. Hence, since what is sought to be done by COMELEC has been accomplished, there is nothing else that the Court can order the COMELEC to perform.

Moreover, the petition failed to meet the requisites for mandamus.

As a general rule, the writ of mandamus lies to compel the performance of a ministerial duty. When the act sought to be performed involves the exercise of discretion, the respondent may only be directed by Mandamus to act but not to act in one way or the other.[9] The denial of due course or cancellation of one's certificate of candidacy is not within the administrative powers of the Commission, but rather calls for the exercise of its quasi-judicial functions.[10] Hence, the Court may only compel COMELEC to exercise such discretion and resolve the matter but it may not control the manner of exercising such discretion. However, as previously discussed, the issuance of a writ commanding COMELEC to resolve the petition for disqualification will no longer serve any purpose since COMELEC has issued its decision on the matter.

Moreover, petitioner has not adequately shown a well-defined, clear and certain legal right to warrant the granting of the petition. He asserts that the unreasonable delay in resolving the petition deprived him of his right to be proclaimed as the winning candidate since all votes cast in favor of respondent are stray due to his invalid candidacy. Accordingly, COMELEC must consider that only he and Amarante Velasco were the candidates in the said election and since he received a higher number of votes than Velasco, petitioner argues that he should be proclaimed the winning candidate.

Petitioner's assertion is bereft of merit.

Section 78 of the Omnibus Election Code[11] provides that petitions to deny due course or cancel a certificate of candidacy should be resolved, after due notice and hearing, not later than fifteen days before the election. In construing this provision together with Section 6 of R.A. No. 6646 or The Electoral Reforms Law of 1987,[12] this Court declared in *Salcedo II v. COMELEC*[13] that the fifteen-day period in Section 78 is merely directory. Thus:

If the petition is filed within the statutory period and the candidate is subsequently declared by final judgment to be disqualified before the election, he 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 the Comelec 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. The fifteen-day period in section 78 for deciding the petition is merely directory.[14] (Emphasis supplied)

It has long been settled in *Codilla Sr. v. De Venecia*[15] that pursuant to Section 6 of R.A. No. 6646, a final judgment before the election is required for the votes of a disqualified candidate to be considered "stray." In the absence of any final judgment of disqualification against Puno, the votes cast in his favor cannot be considered stray.

As to the alleged irregularity in the filing of the certificate of candidacy, it is important to note that this Court has repeatedly held that provisions of the election law regarding certificates of candidacy, such as signing and swearing on the same, as well as the information required to be stated therein, are considered mandatory prior to the elections. Thereafter, they are regarded as merely directory to give effect to the will of the people.[16] In the instant case, Puno won by an overwhelming number of votes. Technicalities should not be permitted to defeat the intention of the voter, especially so if that intention is discoverable from the ballot itself, as in this case.[17]

Moreover, following *Ocampo v. House of Representatives Electoral Tribunal*,[18] a subsequent disqualification of Puno will not entitle petitioner, the candidate who received the second highest number of votes to be declared the winner. It has long been settled in our jurisprudence, as early as 1912, that the candidate who lost in an election cannot be proclaimed the winner in the event that the candidate who won is found to be ineligible for the office for which he was elected. The second placer is just that, a second placer – he lost in the elections and was repudiated by either the majority or plurality of voters.[19]

Finally, petitioner has other plain, speedy and adequate remedy in the ordinary course of law. After a resolution on the petition for disqualification, a motion for reconsideration may be filed before the COMELEC En Banc as what was done by petitioner. Only then can petitioner come before this Court via a petition for certiorari.[20] These rules of procedure are not without reason. They are meant to facilitate the orderly administration of justice and petitioner cannot take a judicial shortcut without violating the rule on hierarchy of courts.

Clearly, petitioner failed to show that he met all the requirements for the issuance of the writ of mandamus.

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.

Puno, C.J., Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes,, and Leonardo-De Castro, JJ., concur.

[1] Rollo, pp. 22-24.

[2] Id. at 13-18.

[3] Id. at 10.

[4] Id. at 30.

[5] Id. at 6.

[6] Id. at 75.

[7] BPI Family Savings Bank, Inc. v. Manikan, 443 Phil. 463, 467 (2003).

[8] David v. Macapagal-Arroyo, G.R. No.171396, May 3, 2006, 489 SCRA 160, 214.

[9] Sison v. Court of Appeals, G.R. No. 124086, June 26, 2006, 492 SCRA 497, 508.

[10] Cipriano v. Commission on Elections, G.R. No. 158830, August 10, 2004, 436 SCRA 45, 56.

[11] See Sec. 7 of R.A. No. 6646.

[12] Sec. 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.

See also Resolution No. 7799, Guidelines on the Filing of Certificates of Candidacy and Nomination of Official Candidates of Registered Political Parties in Connection with the May 14, 2007 Synchronized National and Local Elections.

[13] G.R. No. 135886, August 16, 1999, 312 SCRA 447.

[14] Id. at 454-455.

[15] 442 Phil. 139 (2002).

[16] Sinaca v. Mula, G.R. No. 135691, September 27, 1999, 315 SCRA 266, 281.

[17] Bautista v. Commission on Elections, G.R. No. 133840, November 13, 1998, 298 SCRA 480, 494.

[18] G.R. No. 158466, June 15, 2004, 432 SCRA 144.

[19] Id. at 149-150.

[20] Article IX-A, Section 7; Article IX-C, Section 3.

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