

**MIKE A. FERMIN, PETITIONER, VS. COMMISSION ON ELECTIONS
AND UMBRA RAMIL BAYAM DILANGALEN, RESPONDENTS.***G.R. No. 179695. December 18, 2008*

Ponente: NACHURA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-179695/>**NACHURA, J.:**

These consolidated petitions provide a welcome avenue for the Court to dichotomize, once and for all, two popular remedies to prevent a candidate from running for an elective position which are indiscriminately interchanged by the Bench and the Bar, adding confusion to the already difficult state of our jurisprudence on election laws.

For the Court's resolution are two petitions for certiorari under Rule 64 in relation to Rule 65 of the Rules of Court: (1) G.R. No. 179695, which assails the June 29, 2007 Resolution[1] of the Commission on Elections (COMELEC) 2[nd] Division in SPA No. 07-372, and the September 20, 2007 Resolution[2] of the COMELEC En Banc affirming the said division resolution; and (2) G.R. No. 182369, which challenges the February 14, 2008 Resolution[3] of the COMELEC 1[st] Division in SPR No. 45-2007, the March 13, 2008 Order[4] of the COMELEC En Banc denying petitioner's motion for reconsideration, and the March 26, 2008 Entry of Judgment[5] issued by the Electoral Contests and Adjudication Department (ECAD) of the Commission in the said case.

The relevant facts and proceedings follow.

After the creation of Shariff Kabunsuan,[6] the Regional Assembly of the Autonomous Region in Muslim Mindanao (ARMM), on November 22, 2006, passed Autonomy Act No. 205[7] creating the Municipality of Northern Kabuntalan in Shariff Kabunsuan. This new municipality was constituted by separating Barangays Balong, Damatog, Gayonga, Guiawa, Indatuan, Kapinpilan, P. Labio, Libungan, Montay, Sabaken and Tumaguinting from the Municipality of Kabuntalan.[8]

Mike A. Fermin, the petitioner in both cases, was a registered voter of Barangay Payan, Kabuntalan. On December 13, 2006, claiming that he had been a resident of Barangay Indatuan for 1 year and 6 months, petitioner applied with the COMELEC for the transfer of his registration record to the said barangay.[9] In the meantime, the creation of North Kabuntalan was ratified in a plebiscite on December 30, 2006,[10] formally making Barangay Indatuan a component of Northern Kabuntalan.

Thereafter, on January 8, 2007, the COMELEC approved petitioner's application for the transfer of his voting record and registration as a voter to Precinct 21A of Barangay Indatuan, Northern Kabuntalan.[11] On March 29, 2007, Fermin filed his Certificate of Candidacy (CoC) for mayor of Northern Kabuntalan in the May 14, 2007 National and Local Elections.[12]

On April 20, 2007, private respondent Umbra Ramil Bayam Dilangalen, another mayoralty candidate, filed a Petition[13] for Disqualification [the Dilangalen petition] against Fermin, docketed as SPA (PES) No. A07-003

[re-docketed as SPA No. 07-372 before the COMELEC] with the Office of the Provincial Election Supervisor of Shariff Kabunsuan. The petition alleged that the petitioner did not possess the period of residency required for candidacy and that he perjured himself in his CoC and in his application for transfer of voting record. The pertinent portions of the petition follow:

- THE PETITIONER is of legal age, a registered voter, resident and incumbent Municipal Mayor of the Municipality of Northern Kabuntalan, holding office at Barangay Paulino Labio in the Municipality of Northern Kabuntalan where he may be served summons and other legal processes.
- THE PETITIONER is a candidate for election as Mayor in the same Municipality of Northern Kabuntalan, being a resident of and domiciled in the Municipality since birth. The Respondent is also a candidate for the same office, Mayor in the same Municipality of Northern Kabuntalan. He is, however, not a resident of the Municipality.
- THE RESPONDENT perjured himself when he swore to the truth of his statement in his Certificate of Candidacy of being a resident of the Municipality for the last 38 years, when in truth and in fact he simply transferred his registration from the Municipality of Kabuntalan on 13 December 2006, wherein he stated that he has relocated to that municipality a year and six months earlier, or no earlier than June 2005.
- THE RESPONDENT perjured himself when he swore to the truth of his statement in his Certificate of Candidacy of being a resident of the Municipality for the last 38 years, when in truth and in fact he has stayed for at least 33 years in Barangay Payan, Municipality [of] Kabuntalan.
- THE RESPONDENT perjured himself when he swore to the truth of his statement in his Application for Transfer that he is a resident of Barangay Indatuan on 13 December 2006, wherein he stated that he has relocated to that municipality a year and six months earlier, or on or about June 2005, when in truth and in fact he has never resided much less domiciled himself in Indatuan or anywhere else in the Municipality of Northern Kabuntalan earlier than 14 May 2006.
- THE RESPONDENT perjured himself when he swore to the truth of his statement in his Certificate of Candidacy of being a resident of the Municipality for the last 38 years, when in truth and in fact he has never resided in the Municipality, but was simply visiting the area whenever election is [f]ast approaching.

WHEREFORE, premises considered, it is most respectfully prayed that, [in consideration] of the Respondent not possessing the residence required for candidacy, and having perjured himself in a number of times, the Commission disqualify the Respondent.[14]

Elections were held without any decision being rendered by the COMELEC in the said case. After the counting and canvassing of votes, Dilangalen emerged as the victor with 1,849 votes over Fermin's 1,640.[15] The latter subsequently filed an election protest (Election Case No. 2007-022) with the Regional Trial Court (RTC), Branch 13 of Cotabato City.[16]

G.R. No. 179695

On June 29, 2007, the COMELEC 2nd Division, in SPA No. 07-372, disqualified Fermin for not being a resident of Northern Kabuntalan.[17] It ruled that, based on his declaration that he is a resident of Barangay Payan as of April 27, 2006 in his oath of office before Datu Andal Ampatuan, Fermin could not have been a resident of Barangay Indatuan for at least one year.[18]

The COMELEC En Banc, on September 20, 2007, affirmed the Division's ruling.[19]

Thus, petitioner instituted G.R. No. 179695 before this Court raising the following issues:

A.

WHETHER OR NOT THE PETITION TO DISQUALIFY PETITIONER FROM SEEKING THE MAYORALTY POST OF THE MUNICIPALITY OF NORTHERN KABUNTALAN SHOULD BE DISMISSED FOR HAVING BEEN FILED OUT OF TIME.

B.

WHETHER OR NOT THE ONE (1) YEAR RESIDENCY REQUIREMENT AS PROVIDED BY ART. 56, PAR. NO. 3, RULE XIII, RULES AND REGULATIONS IMPLEMENTING THE LOCAL GOVERNMENT CODE OF THE AUTONOMOUS REGION IN MUSLIM MINDANAO IS APPLICABLE TO PETITIONER, WHO TRANSFERRED HIS VOTER'S REGISTRATION RECORD DUE TO CHANGE OF RESIDENCE FROM BARANGAY PAYAN TO BARANGAY INDATUAN IN THE SAME MUNICIPALITY OF KABUNTALAN.[20]

Petitioner contends that the Dilangalen petition is a petition to deny due course to or cancel a CoC under Section 78 of the Omnibus Election Code (OEC).[21] Following Republic Act (R.A.) No. 6646, the same must be filed within 5 days from the last day for the filing of CoC, which, in this case, is March 30, 2007, and considering that the said petition was filed by Dilangalen only on April 20, 2007, the same was filed out of time. The COMELEC should have then dismissed SPA No. 07-372 outright.[22]

Petitioner further argues that he has been a resident of Barangay Indatuan long before the creation of Northern Kabuntalan. This change of residence prompted him to apply for the transfer of his voter's registration record from Barangay Payan to Barangay Indatuan. Moreover, the one year residency requirement under the law is not applicable to candidates for elective office in a newly created municipality, because the length of residency of all its inhabitants is reckoned from the effective date of its creation.[23]

In his comment, private respondent counters that the petition it filed is one for disqualification under Section 68 of the OEC which may be filed at any time after the last day for filing of the CoC but not later than the candidate's proclamation should he win in the elections. As he filed the petition on April 20, 2007, long before the proclamation of the eventual winning candidate, the same was filed on time.[24]

Private respondent likewise posits that petitioner failed to comply with the one-year residency requirement for him to be able to run for an elective office in Northern Kabuntalan. Petitioner applied for the transfer of his voting record on December 13, 2006, and this was approved only on January 8, 2007.[25]

G.R. No. 182369

During the pendency of G.R. No. 179695 with the Court, Dilangalen filed, on September 27, 2007, with the RTC of Cotabato a motion to dismiss Election Case No. 07-022 on the ground that Fermin had no legal standing to file the said protest, the COMELEC En Banc having already affirmed his disqualification as a candidate; and this Court, in the abovementioned case, did not issue an order restraining the implementation of the assailed COMELEC resolutions.

The RTC, however, denied this motion on September 28, 2007. On motion for reconsideration, the trial court remained steadfast in its stand that the election protest was separate and distinct from the COMELEC proceedings, and that, unless restrained by the proper authority, it would continue hearing the protest.[26]

Assailing the RTC's denial of his motions, Dilangalen filed a Petition for Certiorari and Prohibition[27] docketed as SPR No. 45-2007 with the COMELEC. On February 14, 2008, the COMELEC 1st Division set aside the aforesaid orders of the trial court for having been issued with grave abuse of discretion, prohibited the said court from acting on and proceeding with the protest, and ordered it to dismiss the same.[28] The COMELEC En Banc, on March 13, 2008, denied petitioner's motion for the reconsideration of the division's ruling on account of Fermin's failure to pay the required fees. It further directed the issuance of an entry of judgment in the said

case.[29] On March 26, 2008, the ECAD recorded the finality of the ruling in SPR No. 45-2007 in the Book of Entries of Judgments.[30]

These developments prompted Fermin to file another certiorari petition before this Court, docketed as G.R. No. 182369. In this petition, Fermin raises the following issues for our resolution:

A.

Whether or not public respondent has departed from the accepted and usual course of its rules of procedure, as to call for an exercise of the power of supervision by the Honorable Court.

B.

Whether or not public respondent in taking cognizance of the certiorari and prohibition not in aid of its appellate jurisdiction, acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or in (sic) excess [of jurisdiction].

C.

Whether or not public respondent, in ordering Judge Ibrahim to dismiss the election protest case, acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or in (sic) excess of jurisdiction.

D.

Whether or not public respondent, in not uniformly observing its process in the service of its resolution and/or order, had denied to petitioner the equal protection of the law.

E.

Whether or not the petition for certiorari and prohibition is dismissible in view of the pendency of another action and whereby the result of the first action is determinative of the second action in any event and regardless of which party is successful.

F.

Whether or not there is forum shopping.

G.

Whether or not the public respondent, acting not in aid of its appellate jurisdiction, has authority to issue TRO and/or Preliminary Injunction as ancillary remedy of the original action for certiorari and prohibition.

H.

Whether or not public respondent has jurisdiction to divest the Court of Judge Ibrahim of its jurisdiction on the election protest case.[31]

The Court, on April 29, 2008, initially dismissed the said petition.[32] Fermin subsequently filed in succession his motions for reconsideration and for the consolidation of G.R. Nos. 179695 & 182369. Considering that the two petitions were interrelated, the Court resolved to consolidate them.

The Issues

The primordial issues in these consolidated cases may be encapsulated, as follows:

(1)

Whether or not the Dilangalen petition is one under Section 68 or Section 78 of the OEC;

(2)

Whether or not it was filed on time;

(3)

Whether or not the COMELEC gravely abuse its discretion when it declared petitioner as not a resident of the locality for at least one year prior to the May 14, 2007 elections; and

(4)

Whether or not the COMELEC gravely abuse its discretion when it ordered the dismissal of Election Case No. 07-022 on the ground that Fermin had no legal standing to file the protest.

Our Ruling

I.

Pivotal in the ascertainment of the timeliness of the Dilangalen petition is its proper characterization.

As aforesaid, petitioner, on the one hand, argues that the Dilangalen petition was filed pursuant to Section 78 of the OEC; while private respondent counters that the same is based on Section 68 of the Code.

After studying the said petition in detail, the Court finds that the same is in the nature of a petition to deny due course to or cancel a CoC under Section 78[33] of the OEC. The petition contains the essential allegations of a "Section 78" petition, namely: (1) the candidate made a representation in his certificate; (2) the representation pertains to a material matter which would affect the substantive rights of the candidate (the right to run for the election for which he filed his certificate); and (3) the candidate made the false representation with the intention to deceive the electorate as to his qualification for public office or deliberately attempted to mislead, misinform, or hide a fact which would otherwise render him ineligible.[34] It likewise appropriately raises a question on a candidate's eligibility for public office, in this case, his possession of the one-year residency requirement under the law.

Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which may relate to the qualifications required of the public office he/she is running for. It is noted that the candidate states in his/her CoC that he/she is eligible for the office he/she seeks. Section 78 of the OEC, therefore, is to be read in relation to the constitutional[35] and statutory[36] provisions on qualifications or eligibility for public office. If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate.[37] Indeed, the Court has already likened a proceeding under Section 78 to a quo warranto proceeding under Section 253[38] of the OEC since they both deal with the eligibility or qualification of a candidate,[39] with the distinction mainly in the fact that a "Section 78" petition is filed before proclamation, while a petition for quo warranto is filed after proclamation of the winning candidate.

At this point, we must stress that a "Section 78" petition ought not to be interchanged or confused with a "Section 68" petition. They are different remedies, based on different grounds, and resulting in different eventualities. Private respondent's insistence, therefore, that the petition it filed before the COMELEC in SPA No. 07-372 is in the nature of a disqualification case under Section 68, as it is in fact captioned a "Petition for Disqualification," does not persuade the Court.

The ground raised in the Dilangalen petition is that Fermin allegedly lacked one of the qualifications to be elected as mayor of Northern Kabuntalan, i.e., he had not established residence in the said locality for at least one year immediately preceding the election. Failure to meet the one-year residency requirement for the public office is not a ground for the "disqualification" of a candidate under Section 68. The provision only refers to the commission of prohibited acts and the possession of a permanent resident status in a foreign country as grounds for disqualification, thus:

SEC. 68. Disqualifications.—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 having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, subparagraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as a permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

Likewise, the other provisions of law referring to "disqualification" do not include the lack of the one-year residency qualification as a ground therefor, thus:

Sections 12 of the OEC

SEC. 12. Disqualifications.—Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion, or for any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.

The disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service or sentence, unless within the same period he again becomes disqualified.

Section 40 of the Local Government Code (LGC)[40]

SECTION 40. Disqualifications—The following persons are disqualified from running for any elective local position:

(a)

Those sentence by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;

(b)

Those removed from office as a result of an administrative case;

(c)

Those convicted by final judgment for violating the oath of allegiance to the Republic;

(d)

Those with dual citizenship;

(e)

Fugitive from justice in criminal or nonpolitical cases here or abroad;

(f)

Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and

(g)

The insane or feeble-minded.

Considering that the Dilangalen petition does not state any of these grounds for disqualification, it cannot be categorized as a "Section 68" petition.

To emphasize, a petition for disqualification, on the one hand, can be premised on Section 12 or 68 of the OEC, or Section 40 of the LGC. On the other hand, a petition to deny due course to or cancel a CoC can only be grounded on a statement of a material representation in the said certificate that is false. The petitions also have different effects. While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all, as if he/she never filed a CoC. Thus, in *Miranda v. Abaya*,^[41] this Court made the distinction that a candidate who is disqualified under Section 68 can validly be substituted under Section 77 of the OEC because he/she remains a candidate until disqualified; but a person whose CoC has been denied due course or cancelled under Section 78 cannot be substituted because he/she is never considered a candidate.^[42]

In support of his claim that he actually filed a "petition for disqualification" and not a "petition to deny due course to or cancel a CoC," Dilangalen takes refuge in Rule 25 of the COMELEC Rules of Procedure,^[43] specifically Section 1^[44] thereof, to the extent that it states, "[a]ny candidate who does not possess all the qualifications of a candidate as provided for by the Constitution or by existing law x x x may be disqualified from continuing as a candidate," and COMELEC Resolution No. 7800^[45] (Rules Delegating to COMELEC Field Officials the Authority to Hear and Receive Evidence in Disqualification Cases Filed in Connection with the May 14, 2007 National and Local Elections), which states in Section 5(C)(1) and (3)(a)(4) that:

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 SOME GROUNDS FOR DISQUALIFICATION

1) A verified petition to disqualify a candidate pursuant to Sec. 68 of the OEC and the verified petition to disqualify a candidate for lack of qualifications or possessing some grounds for disqualification may be filed on any day after the last day for filing of certificates of candidacy but not later than the date of proclamation.

x x x x

3) The petition to disqualify a candidate for lack of qualification or possessing some grounds for disqualification, shall be filed in ten (10) legible copies with the concerned office mentioned in Sec. 3 hereof, personally or through a duly authorized representative by any person of voting age, or duly registered political party, organization or coalition of political parties on the grounds that any candidate does not possess all the qualifications of a candidate as provided for by the constitution or by existing law, or who possesses some grounds for disqualification,

3.a. Disqualification under existing election laws:

- For not being a citizen of the Philippines;
- For being a permanent resident of or an immigrant to a foreign country;

- For lack of the required age;
- For lack of residence;
- For not being a registered voter;
- For not being able to read and write;
- In case of a party-list nominee, for not being a bona fide member of the party or organization which he seeks to represent for at least ninety (90) days immediately preceding the day of the election. [Emphasis supplied.]

We disagree. A COMELEC rule or resolution cannot supplant or vary the legislative enactments that distinguish the grounds for disqualification from those of ineligibility, and the appropriate proceedings to raise the said grounds. In other words, Rule 25 and COMELEC Resolution No. 7800 cannot supersede the dissimilar requirements of the law for the filing of a petition for disqualification under Section 68, and a petition for the denial of due course to or cancellation of CoC under Section 78 of the OEC.[46] As aptly observed by the eminent constitutionalist, Supreme Court Justice Vicente V. Mendoza, in his separate opinion in *Romualdez-Marcos v. Commission on Elections*:[47]

Apparently realizing the lack of an authorized proceeding for declaring the ineligibility of candidates, the COMELEC amended its rules on February 15, 1993 so as to provide in Rule 25, §1 the following:

Grounds for disqualification. — Any candidate who does not possess all the qualifications of a candidate as provided for by the Constitution or by existing law or who commits any act declared by law to be grounds for disqualification may be disqualified from continuing as a candidate.

The lack of provision for declaring the ineligibility of candidates, however, cannot be supplied by a mere rule. Such an act is equivalent to the creation of a cause of action which is a substantive matter which the COMELEC, in the exercise of its rule-making power under Art. IX, A, §6 of the Constitution, cannot do. It is noteworthy that the Constitution withholds from the COMELEC even the power to decide cases involving the right to vote, which essentially involves an inquiry into qualifications based on age, residence and citizenship of voters. [Art. IX, C, §2(3)]

The assimilation in Rule 25 of the COMELEC rules of grounds for ineligibility into grounds for disqualification is contrary to the evident intention of the law. For not only in their grounds but also in their consequences are proceedings for "disqualification" different from those for a declaration of "ineligibility." "Disqualification" proceedings, as already stated, are based on grounds specified in §12 and §68 of the Omnibus Election Code and in §40 of the Local Government Code and are for the purpose of barring an individual from becoming a candidate or from continuing as a candidate for public office. In a word, their purpose is to eliminate a candidate from the race either from the start or during its progress. "Ineligibility," on the other hand, refers to the lack of the qualifications prescribed in the Constitution or the statutes for holding public office and the purpose of the proceedings for declaration of ineligibility is to remove the incumbent from office.

Consequently, that an individual possesses the qualifications for a public office does not imply that he is not disqualified from becoming a candidate or continuing as a candidate for a public office and vice-versa. We have this sort of dichotomy in our Naturalization Law. (C.A. No. 473) That an alien has the qualifications prescribed in §2 of the law does not imply that he does not suffer from any of [the] disqualifications provided in §4.

Indeed, provisions for disqualifications on the ground that the candidate is guilty of prohibited election practices or offenses, like other pre- proclamation remedies, are aimed at the detestable practice of "grabbing the proclamation and prolonging the election protest," through the use of "manufactured" election returns or resort to other trickery for the purpose of altering the results of the election. This rationale does not apply to cases for

determining a candidate's qualifications for office before the election. To the contrary, it is the candidate against whom a proceeding for disqualification is brought who could be prejudiced because he could be prevented from assuming office even though in the end he prevails.[48]

Furthermore, the procedure laid down in the said Rule 25 of the COMELEC Rules of Procedure cannot be used in "Section 78" proceedings, precisely because a different rule, Rule 23,[49] specifically governs petitions to deny due course to or cancel CoCs.

II.

Having thus determined that the Dilangalen petition is one under Section 78 of the OEC, the Court now declares that the same has to comply with the 25-day statutory period for its filing. *Aznar v. Commission on Elections*[50] and *Loong v. Commission on Elections*[51] give ascendancy to the express mandate of the law that "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." Construed in relation to reglementary periods and the principles of prescription, the dismissal of "Section 78" petitions filed beyond the 25-day period must come as a matter of course.

We find it necessary to point out that Sections 5 and 7[52] of Republic Act (R.A.) No. 6646,[53] contrary to the erroneous arguments of both parties, did not in any way amend the period for filing "Section 78" petitions. While Section 7 of the said law makes reference to Section 5 on the procedure in the conduct of cases for the denial of due course to the CoCs of nuisance candidates[54] (retired Chief Justice Hilario G. Davide, Jr., in his dissenting opinion in *Aquino v. Commission on Elections*[55] explains that "the 'procedure hereinabove provided' mentioned in Section 7 cannot be construed to refer to Section 6 which does not provide for a procedure but for the effects of disqualification cases, [but] can only refer to the procedure provided in Section 5 of the said Act on nuisance candidates x x x."), the same cannot be taken to mean that the 25-day period for filing "Section 78" petitions under the OEC is changed to 5 days counted from the last day for the filing of CoCs. The clear language of Section 78 certainly cannot be amended or modified by the mere reference in a subsequent statute to the use of a procedure specifically intended for another type of action. Cardinal is the rule in statutory construction that repeals by implication are disfavored and will not be so declared by the Court unless the intent of the legislators is manifest.[56] In addition, it is noteworthy that *Loong*,[57] which upheld the 25-day period for filing "Section 78" petitions, was decided long after the enactment of R.A. 6646. In this regard, we therefore find as contrary to the unequivocal mandate of the law, Rule 23, Section 2 of the COMELEC Rules of Procedure which states:

Sec. 2. Period to File Petition.--The petition must be filed within five (5) days following the last day for the filing of certificates of candidacy.

As the law stands, the petition to deny due course to or cancel a CoC " may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy."

Accordingly, it is necessary to determine when Fermin filed his CoC in order to ascertain whether the Dilangalen petition filed on April 20, 2007 was well within the restrictive 25-day period. If it was not, then the COMELEC should have, as discussed above, dismissed the petition outright.

The record in these cases reveals that Fermin filed his CoC for mayor of Northern Kabuntalan for the May 14, 2007 National and Local Elections on March 29, 2007.[58] It is clear therefore that the petition to deny due course to or cancel Fermin's CoC was filed by Dilangalen well within the 25-day reglementary period. The COMELEC therefore did not abuse its discretion, much more gravely, when it did not dismiss the petition outright.

III.

However, the Court finds the COMELEC to have gravely abused its discretion when it precipitately declared that Fermin was not a resident of Northern Kabuntalan for at least one year prior to the said elections.

In its assailed June 29, 2007 Resolution,[59] the COMELEC ruled as follows:

In the petitioner's memorandum, an authenticated copy of the respondent's oath of office subscribed and sworn to before Datu Andal Ampatuan, Governor Maguindanao Province, it was stated that respondent's residence is at Barangay Payan, Maguindanao (sic) as of April 27, 2006. Clearly the respondent is not a resident of Northern Kabuntalan earlier than 15 May 2006 as his very own oath of office would reveal that he is really a resident of Barangay Payan, Kabuntalan less than 365 days immediately preceding the May 14, 2007 elections. He is a resident of a barangay not a component of the local government unit in which he seeks to be elected as of May 15, 2006 and is therefore not qualified or eligible to seek election as mayor in the said municipality.[60]

Obviously, the COMELEC relied on a single piece of evidence to support its finding that petitioner was not a resident of Barangay Indatuan, Northern Kabuntalan, i.e., the oath of office subscribed and sworn to before Governor Datu Andal Ampatuan, in which petitioner indicated that he was a resident of Barangay Payan, Kabuntalan as of April 27, 2006. However, this single piece of evidence does not necessarily support a finding that petitioner was not a resident of Northern Kabuntalan as of May 14, 2006, or one year prior to the May 14, 2007 elections.[61] Petitioner merely admitted that he was a resident of another locality as of April 27, 2006, which was more than a year before the elections. It is not inconsistent with his subsequent claim that he complied with the residency requirement for the elective office, as petitioner could have transferred to Barangay Indatuan after April 27, 2006, on or before May 14, 2006.

Neither does this evidence support the allegation that petitioner failed to comply with the residency requirement for the transfer of his voting record from Barangay Payan to Barangay Indatuan. Given that a voter is required to reside in the place wherein he proposes to vote only for six months immediately preceding the election,[62] petitioner's application for transfer on December 13, 2006 does not contradict his earlier admission that he was a resident of Barangay Payan as of April 27, 2006. Be that as it may, the issue involved in the Dilangalen petition is whether or not petitioner made a material representation that is false in his CoC, and not in his application for the transfer of his registration and voting record.

The foregoing considered, the Court finds that the Dilangalen petition does not make out a prima facie case. Its dismissal is therefore warranted. We emphasize that the mere filing of a petition and the convenient allegation therein that a candidate does not reside in the locality where he seeks to be elected is insufficient to effect the cancellation of his CoC. Convincing evidence must substantiate every allegation.[63] A litigating party is said to have a prima facie case when the evidence in his favor is sufficiently strong for his opponent to be called on to answer it. A prima facie case, then, is one which is established by sufficient evidence and can be overthrown only by rebutting evidence adduced on the other side.[64]

IV.

In light of the foregoing disquisition, the COMELEC's order for the dismissal of Fermin's election protest is tainted with grave abuse of discretion, considering that the same is premised on Fermin's alleged lack of legal standing to file the protest, which, in turn, is based on Fermin's alleged lack of residency qualification. With our disposition herein that the Dilangalen petition should be dismissed, a disquisition that Fermin has no standing as a candidate would be reckless and improper.

WHEREFORE, premises considered, the petitions for certiorari are GRANTED. The assailed issuances of the COMELEC are ANNULLED and SET ASIDE.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Carpio Morales, Tinga, Chico-Nazario, Velasco, Jr., Reyes, Leonardo-De Castro, and Brion, JJ., concur.
Corona, and Azcuna, JJ., on official leave.

[1] Rollo (G.R. No. 179695), pp. 36-39.

[2] Id. at 33-35.

[3] Rollo (G.R. No. 182369), pp. 67-76.

[4] Id. at 79-80.

[5] Id. at 81.

[6] The Court, in the recently promulgated *Sema v. Commission on Elections*, G.R. No. 177597, July 16, 2008, declared as void Muslim Mindanao Autonomy Act No. 201 creating the Province of Shariff Kabunsuan, although there is still a pending Motion for Reconsideration.

[7] Rollo (G.R. No. 179695), pp. 51-53.

[8] Id. at 51.

[9] Id. at 44.

[10] Id. at 46.

[11] Id. at 45-47.

[12] Rollo (G.R. No. 182369), p. 271.

[13] Rollo (G.R. No. 179695), pp. 55-56.

[14] Id. at 55.

[15] Id. at 68.

[16] Id. at 10.

[17] Id. at 36-39.

[18] Id. at 37-38.

[19] Id. at 33-34.

[20] Id. at 11-12.

[21] Batas Pambansa Blg. 881, approved on December 3, 1985.

[22] Rollo (G.R. No. 179695), pp. 12-15.

[23] Id. at 15-20.

[24] Id. at 112-121.

[25] Id. at 121-125.

[26] Rollo (G.R. No. 182369), pp. 97-98.

[27] Id. at 82-95.

[28] Id. at 75.

[29] Id. at 79-80.

[30] Id. at 81.

[31] Id. at 13-18.

[32] Id. at 229.

[33] Section 78 of the Omnibus 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 notice and hearing, not later than fifteen days before the election.

[34] Salcedo II v. Commission on Elections, 371 Phil. 377, 388-389 (1999).

[35] Art. VI, Sec. 3 which provides that:

Section 3. No person shall be a Senator unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least thirty- five years of age, able to read and write, a registered voter, and a resident of the Philippines for not less than two years immediately preceding the day of the election.

Art. VI, Sec. 6 which provides that:

Section 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election.

Art. VII, Sec. 2 which provides that:

Section 2. No person may be elected President unless he is a natural- born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

Art. VII, Sec. 3 which pertinently provides that:

Section 3. There shall be a Vice-President who shall have the same qualifications and term of office and be elected with and in the same manner as the President. x x x x

[36] Sec. 39 of the Local Government Code which provides:

SECTION 39. Qualifications.—

(a) An elective local official must be a citizen of the Philippines; a registered voter in the barangay, municipality, city, or province or, in the case of a member of the sangguniang panlalawigan , sangguniang panlungsod, or sangguniang bayan, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other language or dialect.

(b) Candidates for the position of governor, vice-governor, or member of the sangguniang panlalawigan, or mayor, vice-mayor or member of the sangguniang panlungsod of highly urbanized cities must be at least twenty-one (21) years of age on election day.

(c) Candidates for the position of mayor or vice-mayor of independent component cities, component cities, or municipalities must be at least twenty-one (21) years of age on election day.

(d) Candidates for the position of member of the sangguniang panlungsod or sangguniang bayan must be at least eighteen (18) years of age on election day.

(e) Candidates for the position of punong barangay or member of the sangguniang barangay must be at least eighteen (18) years of age on election day.

(f) Candidates for the sangguniang kabataan must be at least fifteen (15) years of age but not more than twenty-one (21) years of age on election day.

[37] Salcedo II v. Commission on Elections, *supra* note 34, at 454.

[38] Sec. 253 of the OEC provides:

Sec. 253. Petition for quo warranto.—Any voter contesting the election of any Member of the Batasang Pambansa, regional, provincial, or city officer on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall file a sworn petition for quo warranto with the Commission within ten days after the proclamation of the results of the election.

Any voter contesting the election of any municipal or barangay officer on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall file a sworn petition for quo warranto with the regional trial court or metropolitan trial court, respectively, within ten days after the proclamation of the results of the election.

[39] Salcedo II v. Commission on Elections, *supra* note 34, at 387.

[40] Republic Act No. 7160, which became effective on January 1, 1992.

[41] 370 Phil. 642 (1999).

[42] *Id.* at 659.

[43] Approved on February 15, 1993.

[44] Rule 25, Sec. 1 of the COMELEC Rules of Procedure reads in full:

SECTION 1. Grounds for Disqualification.—Any candidate who does not possess all the qualifications of a candidate as provided for by the Constitution or by existing law or who commits any act declared by law to be grounds for disqualification may be disqualified from continuing as a candidate. [*Italics supplied.*]

[45] Promulgated on January 5, 2007.

[46] Loong v. Commission on Elections, G.R. No. 93986, December 22, 1992, 216 SCRA 760, 767, cited by former Chief Justice Hilario G. Davide, Jr. in his Dissenting Opinion in Aquino v. Commission on Elections, G.R. No. 120265, September 18, 1995, 248 SCRA 400, 445-447.

[47] G.R. No. 119976, September 18, 1995, 248 SCRA 300.

[48] *Id.* at 397-398. (Emphasis supplied.)

[49] Rule 23 of the COMELEC Rules of Procedure provides:

Rule 23 - Petition to Deny Due Course to or Cancel Certificates of Candidacy

Section 1. Grounds for Denial of Certificate of Candidacy.—A petition to deny due course to or cancel a certificate of candidacy for any elective office may be filed with the Law Department of the Commission by any citizen of voting age or a duly registered political party, organization, or coalition of political parties on the exclusive ground that any material representation contained therein as required by law is false.

Sec. 2. Period to File Petition.—The petition must be filed within five (5) days following the last day for the filing of certificates of candidacy.

Sec. 3. Summary Proceeding.—The petition shall be heard summarily after due notice.

Sec. 4. Delegation of Reception of Evidence.—The Commission may designate any of its officials who are members of the Philippine Bar to hear the case and to receive evidence.

[50] G.R. No. 83820, May 25, 1990, 185 SCRA 703,708-709.

[51] G.R. No. 93986, December 22, 1992, 216 SCRA 760, 765-766.

[52] Sections 5 and 7 of R.A. No. 6646 reads:

"Sec. 5. Procedure in Cases of Nuisance Candidates. - (a) A verified petition to declare a duly registered candidate as a nuisance candidate under Section 69 of Batas Pambansa Blg. 881 shall be filed personally or through duly authorized representative with the Commission by any registered candidate for the same office within five (5) days from the last day for the filing of certificates of candidacy. Filing by mail shall not be allowed.

"(b) Within three (3) days from the filing of the petition, the Commission shall issue summons to the respondent candidate together with a copy of the petition and its enclosures, if any.

"(c) The respondent shall be given three (3) days from receipt of the summons within which to file his verified answer (not a motion to dismiss) to the petition, serving copy thereof upon the petitioner. Grounds for a motion to dismiss may be raised as affirmative defenses.

"(d) The Commission may designate any of its officials who are lawyers to hear the case and receive evidence. The proceeding shall be summary in nature. In lieu of oral testimonies, the parties may be required to submit position papers together with affidavits or counter-affidavits and other documentary evidence. The hearing officer shall immediately submit to the Commission his findings, reports, and recommendations within five (5) days from the completion of such submission of evidence. The Commission shall render its decision within five (5) days from receipt thereof.

"(e) The decision, order, or ruling of the Commission shall, after five (5) days from receipt of a copy thereof by the parties, be final and executory unless stayed by the Supreme Court.

"(f) The Commission shall within twenty-four hours, through the fastest available means, disseminate its decision or the decision of the Supreme Court to the city or municipal election registrars, boards of election inspectors and the general public in the political subdivision concerned.

"x x x x

"Sec. 7. Petition to Deny Due Course To or Cancel a Certificate of Candidacy. - The procedure hereinabove provided shall apply to petitions to deny due course to or cancel a certificate of candidacy as provided in Section 78 of Batas Pambansa Blg. 881."

[53] Entitled "AN ACT INTRODUCING ADDITIONAL REFORMS IN THE ELECTORAL SYSTEM AND

FOR OTHER PURPOSES;" approved on January 5, 1988.

[54] Section 69 of the OEC provides that: "The Commission may, *motu proprio* or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if it is shown that said certificate has been filed to put the election process in mockery or disrepute or to cause confusion among voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no bona fide intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate."

[55] G.R. No. 120265, September 18, 1995, 248 SCRA 400, 448.

[56] *Tan v. Pereña*, G.R. No. 149743, February 18, 2005, 452 SCRA 53, 68.

[57] *Supra* note 46.

[58] *Rollo* (G.R. No. 182369), p. 271.

[59] *Supra* note 1.

[60] *Id.* at 37-38.

[61] *Supra* note 36.

[62] Section 9 of Republic Act No. 8189 or "The Voter's Registration Act of 1996" provides:

Sec. 9. Who may Register. - All citizens of the Philippines not otherwise disqualified by law who are at least eighteen (18) years of age, and who shall have resided in the Philippines for at least one (1) year, and in the place wherein they propose to vote, for at least six (6) months immediately preceding the election, may register as a voter.

Any person who temporarily resides in another city, municipality or country solely by reason of his occupation, profession, employment in private or public service, educational activities, work in the military or naval reservations within the Philippines, service in the Armed Forces of the Philippines, the National Police Forces, or confinement or detention in government institutions in accordance with law, shall not be deemed to have lost his original residence.

Any person, who, on the day of registration may not have reached the required age or period of residence but, who, on the day of the election shall possess such qualifications, may register as a voter. (Emphasis ours.)

[63] See *Mutlan v. Commission on Elections*, G.R. No. 171248, April 2, 2007, 520 SCRA 152, 163; *Pasandalan v. Commission on Elections*, 434 Phil. 161, 173 (2002).

[64] *Republic v. Sandiganbayan*, 325 Phil. 762, 809 (1996).

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