

NARDO M. VELASCO, PETITIONER, VS. COMMISSION ON ELECTIONS AND MOZART P. PANLAQUI, RESPONDENTS.

G.R. No. 180051. December 24, 2008

Ponente: BRION, J.

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BRION, J.:

This petition for certiorari - filed by Nardo M. Velasco (Velasco) under Rule 64, in relation with Rule 65, of the Revised Rules of Court - seeks to set aside and annul [1] the Resolution dated July 6, 2007 of the Second Division of the Commission on Elections (COMELEC) and [2] the Resolution dated October 15, 2007 of the COMELEC en banc, in SPA Case No. 07-148 entitled Mozart P. Panlaqui v. Nardo M. Velasco. The assailed resolutions denied due course to the Certificate of Candidacy (COC) Velasco had filed for the position of Mayor of the Municipality of Sasmuan, Pampanga.

THE ANTECEDENTS

Velasco was born in San Antonio, Sasmuan, Pampanga on June 22, 1952 to Arsenio Velasco and Lucia Mangalindan. He married Evelyn D. Castillo on June 29, 1975 at the Roman Catholic Church of Sasmuan. In 1983, he moved to and worked in the United States of America where he subsequently became a citizen.

Sometime in 2006, Velasco applied for dual citizenship under Republic Act No. 9225, otherwise known as the Citizenship Retention and Re-Acquisition Act of 2003. His application was approved on July 31, 2006. On the same day, he took his oath of allegiance to the Republic of the Philippines before the Philippine Consulate General in San Francisco. He returned to the Philippines on September 14, 2006 and has not left since, except for a 3-day Hongkong trip from September 26, 2006 to September 29, 2009.

Soon thereafter or on October 13, 2006, Velasco applied for registration as a voter of Sasmuan, Pampanga. The Election Registration Board (ERB) denied his application. Thereupon, Velasco filed a petition for the inclusion of his name in the list of voters with the Municipal Trial Court of Sasmuan (MTC). The MTC, finding no evidence of Velasco's change of domicile, granted Velasco's petition on February 9, 2007; it reversed the ERB's decision and ordered Velasco's inclusion in the List of Voters of Sasmuan.

On March 1, 2007, Branch 52 of the Regional Trial Court of Guagua, Pampanga (RTC) reversed and set aside, on appeal, the MTC decision. The RTC reasoned out that Velasco lost his domicile of origin [Sasmuan, Pampanga] when he became a US citizen; under Philippine immigration laws, he could only stay in the Philippines as a visitor or as a resident alien. Velasco, according to the RTC, only regained or reacquired his Philippine residency on July 31, 2006 when he reacquired his Filipino citizenship. The RTC based this conclusion on our ruling in *Caasi v. Court of Appeals*[1] that naturalization in a foreign country results in the abandonment of domicile in the Philippines. Thus, the RTC found that Velasco failed to comply with the residency requirement under the Constitution, making him ineligible to vote in the May 14, 2007 elections.

Velasco appealed the RTC decision to the Court of Appeals (CA) via a petition for review under Rule 42 of the

Rules of Court; the appeal was docketed as CA-G.R. SP No. 98259.

It was against this factual backdrop that Velasco filed on March 28, 2007 his COC for the position of Mayor of Sasmuan. Velasco's COC contains, among others, the required information that he is a registered voter of Precinct No. 103-A of Sasmuan, Pampanga. He executed on even date an Affidavit renouncing, abandoning, and relinquishing his American citizenship.

The next day, private respondent Mozart Panlaqui (Panlaqui), who also filed his COC for the position of Mayor of Sasmuan, filed a Petition to Deny Due Course To and/or To Cancel Velasco's COC, claiming that: (1) contrary to Velasco's claim, he is not a registered voter of Precinct No. 103-A, as his name is not included in the list of voters; (2) the RTC has rendered a decision denying Velasco's petition for inclusion as voter; (3) Velasco does not possess the constitutional requirement of legal residency (i.e., one year residency in the Philippines immediately preceding the election as provided under Section 1, Article V of the Constitution) to register as voter; he arrived in the Philippines only last September 14, 2006; and (4) Velasco is not eligible to run for office since he is not a qualified voter. Panlaqui asked for the annulment, revocation and cancellation of, or denial of due course to, Velasco's COC that allegedly contained obvious and gross material misrepresentation. The case was docketed as SPA Case No. 07-148.

In his Answer, Velasco denied the allegations of Panlaqui's petition and claimed in defense that: (1) he possesses all the qualifications of a voter of Sasmuan, as he is a domiciliary and permanent resident of the Philippines and Sasmuan since birth; that, when he took his oath of allegiance on July 31, 2006, he is considered not to have lost his Philippine citizenship and therefore continues to enjoy full civic and political rights under the Constitution and the statutes; (2) the appeal or review of the RTC decision is pending resolution with the Court of Appeals; (3) he did not act with malice, bad faith and gross misrepresentation when he stated that he is a registered voter of Precinct No. 103-A of Sasmuan in his COC, as the RTC decision has not been reversed with finality; (4) he has renounced his American citizenship on March 29, 2007 or prior to the filing of his COC, making him eligible to seek elective public office pursuant to Republic Act No. 9255; and (5) he possesses all the qualifications of a voter of Sasmuan and of a candidate for Municipal Mayor, Sasmuan being his domicile of origin and permanent residence. He claimed that he is qualified to vote and seek public office until a final judgment is rendered saying otherwise; hence, he did not commit any misrepresentation and Panlaqui's petition should be dismissed.

Velasco garnered 7,822 votes [the most number] for the position of Mayor of Sasmuan in the May 14, 2007 election. As the COMELEC failed to resolve Panlaqui's petition prior to the election, Velasco was proclaimed Mayor of Sasmuan on May 16, 2007. He took his oath of office and assumed the powers and functions of the office on June 30, 2007.

On July 6, 2007, the Second Division of the COMELEC issued a Resolution - the first of the interrelated resolutions assailed in the present petition - canceling Velasco's COC and declaring his proclamation as Mayor of Sasmuan null and void. Citing Section 138 of the Omnibus Election Code (OEC)[2] which declared the decision of the RTC in the voters inclusion/exclusion proceedings final and executory, the Second Division of the COMELEC found Velasco guilty of material misrepresentation when he claimed in his COC filed on March 28, 2007 that he is a registered voter of Sasmuan, Pampanga. This defect, according to the Second Division, effectively voided Velasco's COC.

Velasco moved to reconsider the Second Division's Resolution, but the COMELEC en banc in a Resolution dated October 15, 2007 (also assailed in this petition) denied the motion. The COMELEC en banc essentially affirmed the Second Division's ruling. Additionally, the COMELEC pointed out that in the absence of a writ or order issued by the CA (where the appeal from the RTC decision in the inclusion/exclusion case was then pending)

enjoining the enforcement of the RTC decision, it had to apply Section 138 of the OEC. Velasco responded to this development by filing the present petition with this Court.

THE PETITION, COMMENTS AND RELATED DEVELOPMENTS

The petition is based on the following grounds/arguments:

- Respondent Comelec committed grave abuse of discretion when it decided the issue on petitioner's right to vote despite its apparent lack of jurisdiction on this issue and the pendency of such prejudicial issue before the CA.
- Respondent Comelec committed grave abuse of discretion when it ruled that the March 1, 2008 decision of the RTC of Guagua, Pampanga reversing the earlier decision of the MTC of Sasmuan, Pampanga is already final and executory.
- Respondent COMELEC committed grave abuse of discretion when it annulled the proclamation of the petitioner without notice and hearing.
- Respondent Comelec committed grave abuse of discretion when it ruled that petitioner committed material misrepresentation in his COC by merely relying on private respondent's baseless allegations in the petition to deny due course to petitioner's COC without taking into consideration that petitioner possesses all the qualifications and none of the disqualification of a voter.

In his comment, Panlaqui asserts that: (1) Velasco committed forum shopping, as another case involving the same issues is on appeal and pending resolution with the CA; and (2) in light of this appeal, not all the requisites for a petition for certiorari are present; in the alternative and assuming certiorari to be proper, the COMELEC did not commit grave abuse of discretion, as the RTC decision is final, executory, and non-appealable.

The Office of the Solicitor General (OSG) filed a Comment in behalf of the COMELEC. The OSG argues that the COMELEC did not commit grave abuse of discretion. The COMELEC has jurisdiction - under Section 78 of Batas Pambansa Blg. 881, as amended, or the OEC - over petitions to deny due course and/or cancel a COC (COC-denial/cancellation). There was likewise no denial of due process; Velasco filed an Answer to Panlaqui's petition and was fully heard before the COMELEC denied due course to his COC. The OSG also argues that Velasco's immigration to the United States and subsequent acquisition of US citizenship constituted an abandonment of his Philippine domicile and residence. Finally, the OSG claims that Velasco committed misrepresentation in declaring his residence at Sasmuan in his COC - a ground for the cancellation of COC under Section 78 of the OEC. The real issue, according to the OSG, is not Velasco's right to vote, but the misrepresentation he committed when he filed his COC.

On March 5, 2008, the COMELEC issued a writ of execution to implement the assailed resolutions. The CA, on the other hand, rendered on March 13, 2008 its decision in CA-GR SP No. 98259 granting Velasco's appeal, thereby reversing and setting aside the RTC decision. The appellate court ruled that, contrary to the RTC's finding, Velasco effectively reacquired his residence when he decided to relocate in the Philippines for good in 2003; from 2003-2006, Velasco stayed in the Philippines for a total of almost two (2) years for the last three (3) years immediately preceding the May 14, 2007 election; from the totality of these acts, Velasco revealed his intention to reacquire his rights as a Filipino citizen. Citing *Macalintal v. Commission on Elections*,^[3] the CA considered Velasco a qualified voter.

On Velasco's motion, we issued a status quo ante order enjoining the COMELEC from implementing the assailed resolutions.

In an interesting twist, the CA issued on August 19, 2008 an Amended Decision - in response to a motion for reconsideration of its earlier decision - dismissing Velasco's Rule 42 petition for lack of jurisdiction. It reversed its earlier ruling that it has jurisdiction to entertain the appeal, explicitly stating that the jurisprudence it cited to support its appellate jurisdiction in voters' inclusion/exclusion proceeding is no longer good law because of the amendments to the election law on which its cited jurisprudence was based. It declared that "Section 138 of the OEC being explicit that the decision on appeal by the RTC in inclusion and exclusion cases is immediately final and executory appears to be a clear mandate for this Court (the CA) not to entertain instant petition for lack of jurisdiction."

Based on these submissions, we are called upon to resolve the following issues: (1) whether Velasco forum-shopped; and (2) whether the COMELEC gravely abused its discretion in canceling Velasco's COC.

THE COURT'S RULING

We find the petition devoid of merit.

Grave Abuse of Discretion.

The well-settled rule is that this Court will not interfere with a COMELEC decision unless the COMELEC is shown to have committed grave abuse of discretion.[4] Correctly understood, grave abuse of discretion is such "capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or [an] exercise of power in an arbitrary and despotic manner by reason of passion or personal hostility, or an exercise of judgment so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act in a manner not at all in contemplation of law." [5]

Velasco imputes grave abuse of discretion on the COMELEC for canceling his COC on the sole ground that he committed false representation when he claimed that he is a registered voter of Precinct No. 103-A. This imputation directly poses to us the question: was the COMELEC ruling capriciously, whimsically, and arbitrarily made?

In answering this question, we recognize at the outset that together with the cancellation of the COC that is directly before us, we have to consider the effect and impact of the inclusion/exclusion proceedings that Velasco brought before the MTC which, on appeal to the RTC, ultimately led to the denial of his listing as a voter in Sasmuan. While this inclusion/exclusion case is not before us, it was the ruling in this proceeding that the COMELEC cited as ground for the cancellation of Velasco's COC after Velasco claimed that he is a registered voter of Precinct No. 103-A of Sasmuan, Pampanga.

The COC Denial/Cancellation Proceedings.

Section 74, in relation with Section 78 of the OEC governs the cancellation of, and grant or denial of due course to, COCs. The combined application of these sections requires that the facts stated in the COC by the would-be candidate be true, as any false representation of a material fact is a ground for the COC's cancellation or the withholding of due course. To quote these provisions:

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 assumed 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

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 election.

The false representation that these provisions mention must necessarily pertain to a material fact, not to a mere innocuous mistake. This is emphasized by the consequences of any material falsity: a candidate who falsifies a material fact cannot run; if he runs and is elected, cannot serve; in both cases, he or she can be prosecuted for violation of the election laws. Obviously, these facts are those that refer to a candidate's qualification for elective office, such as his or her citizenship and residence.[6] The candidate's status as a registered voter similarly falls under this classification as it is a requirement that, by law (the Local Government Code), must be reflected in the COC. The reason for this is obvious: the candidate, if he or she wins, will work for and represent the local government under which he is running.

Separately from the requirement of materiality, a false representation under Section 78 must consist of a "deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible." In other words, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office.[7]

The Voters' Inclusion/Exclusion Proceedings.

The process of voters' inclusion/exclusion, as part of the voters' registration process, is provided and defined under Sections 138, 139 and 143 of the OEC. These sections provide:

Sec. 138. Jurisdiction in inclusion and exclusion cases. - The Municipal and Metropolitan Trial Courts shall have original and exclusive jurisdiction over all cases of inclusion and exclusion of voters from the list in their respective cities or municipalities. Decisions of the Municipal or Metropolitan Trial Courts may be appealed by the aggrieved party to the Regional Trial Courts within five (5) days from receipt of notice thereof. Otherwise, said decision shall become final and executory. The regional trial court shall decide the appeal within ten (10) days from the time it is received and the decision shall become final and executory. No motion for reconsideration shall be entertained [As amended by Section 33 of Republic Act No. 8189 (RA 8189)].

Sec. 139. Petition for inclusion of voters in the list. - Any person whose application for registration has been disapproved by the Board or whose name has been stricken out from the list may file with the court a petition to include his name in the permanent list of voters in his precinct at any time except one hundred five (105) days prior to a regular election or seventy-five (75) days prior to a special election. It shall be supported by a certificate of disapproval of his application and proof of service of notice of his petition upon the Board. The petition shall be decided within fifteen (15) days after its filing.

If the decision is for the inclusion of voters in the permanent list of voters, the Board shall place the application for registration previously disapproved in the corresponding book of voters and indicate in the application for registration the date of the order of inclusion and the court which issued the same [As amended by Section 34 of RA 8189].

Section 143. Common rules governing judicial proceedings in the matter of inclusion, exclusion and correction of names of voters. -

- (a) Petition for inclusion, exclusion, or correction of names of voters shall be filed during office hours;
- (b) Notice of the place, date and time of the hearing of the petition shall be served upon the members of the Board and the challenged voter upon the filing of the petition. Service of such notice may be made by sending a copy thereof by personal delivery or by leaving it in the possession of a person of sufficient discretion in the residence of the challenged voter, or by registered mail. Should the foregoing procedures be not practicable, the notice shall be posted in the bulletin board of the city or municipal hall and in two (2) other conspicuous places within the city or municipality;
- x x x
- (c) A petition shall refer only one to one (1) precinct and implead the Board as respondents;
- (d) No costs shall be assessed against any party in these proceedings. However, if the court should find that the application has been filed solely to harass the adverse party and cause him to incur expenses, it shall order the culpable party to pay the costs and incidental expenses.
- (e) Any voter, candidate or political party who may be affected by the proceedings may intervene and present his evidence.
- (f) The decision shall be based on the evidence presented and in no case rendered upon a stipulation of facts. x x x
- (g) The petition shall be heard and decided within ten (10) days from the date of its filing. Cases appealed to the Regional Trial Court shall be decided within ten (10) days from receipt of the appeal. In all, cases, the court shall decide these petitions not later than fifteen (15) days before the election and the decision shall be immediately final and executory. [As amended by Section 32 of RA 8189]

Inclusion/exclusion proceedings essentially involve the simple issue of whether a petitioner shall be included in or excluded from the list of voters based on the qualifications required by law and the facts presented to show possession of these qualifications.

The Proceedings Compared.

In terms of purpose, voters' inclusion/exclusion and COC denial/cancellation are different proceedings; one refers to the application to be registered as a voter to be eligible to vote, while the other refers to the application to be a candidate. Because of their differing purposes, they also involve different issues and entail different reliefs although the facts on which they rest may have commonalities where they may be said to converge or interface. One such commonality is on the matter of residence. Section 9 of Republic Act 8189, otherwise known as the Voters' Registration Act (VRA), requires that voters "shall have resided in the Philippines for at least one (1) year, and in the place wherein they propose to vote, at least six (6) months immediately preceding the election." The OEC, on the other hand, requires under its Section 74 that the would-be candidate state material facts such as, among others, his residence. Under the combined application of Section 65 of the OEC and Section 39 of the Local Government Code (LGC), a local official must - among others - have the same residency requirement as required under the VRA. Another point of convergence is on the candidate's status as a registered voter; a candidate for a local government position must be a registered voter in the barangay, municipality, province, or city where he or she intends to run for office.

The remedies available in the two proceedings likewise differ. Velasco's remedy from the adverse decision in his petition for inclusion as voter is as provided under Section 138 of the OEC quoted above. From the MTC, the recourse is to the RTC whose decision is final and executory, correctible by the Court of Appeals only by a writ of certiorari based on grave abuse of discretion amounting to lack of jurisdiction. On the other hand, the approval of

a certificate of candidacy or its denial is a matter directly cognizable by the COMELEC, with the decision of its Division reviewable by the COMELEC en banc whose decision is in turn reviewable by this Court under Rule 64 of the Rules of Court and Section 7, of Article IX-A of the 1987 Constitution.

No Grave Abuse of Discretion.

In the present case, the ERB denied Velasco's registration as a voter, which denial the RTC subsequently supported. As already mentioned, this denial by the RTC is, by law, final and executory. Since Velasco's knowledge of the RTC decision at the time he filed his COC is not disputed, the COMELEC concluded that he committed a material misrepresentation when he stated under oath in his COC that he is a registered voter of Sasmuan.

Under these facts and legal situation, we cannot hold that the COMELEC's conclusion is legally erroneous, much less that it is tainted by grave abuse of discretion. It is a matter of record, appearing in a final RTC judgment no less, that Velasco was not a registered voter of Sasmuan at the time he filed his COC. His claim in this regard was therefore false and was a material misrepresentation. Other than his active misrepresentation, Velasco likewise was inexplicably silent about, and thus knowingly omitted any mention of, the denial of his registration. As the COMELEC did, we can only conclude that he deliberately concealed the existence of the final and executory RTC ruling when he filed his COC. He could not disclose this fact as the unavoidable consequence of disclosure was to render him unqualified to be a candidate.[8]

That the COMELEC relied on the RTC ruling in canceling the COC of Velasco cannot likewise be a legal error as Section 138 of the OEC is clear and categorical in its terms: "Decisions of the Municipal or Metropolitan Trial Courts may be appealed by the aggrieved party to the Regional Trial Courts within five (5) days from receipt of notice thereof. Otherwise, said decision shall become final and executory. The regional trial court shall decide the appeal within ten days from the time the appeal was received and its decision shall be final and executory." We note that when Velasco sought recourse with the Court of Appeals, he did so by way of appeal under Rule 42 of the Rules of Court - a recourse that was not available to him because an RTC ruling in an inclusion/exclusion is final and executory. This led the appellate court to recognize in its Amended Decision of August 19, 2008, albeit on motion for reconsideration, that it had no jurisdiction to entertain Velasco's appeal.

The Right to Vote

The above discussions, particularly on the distinctions between inclusion/exclusion proceedings and COC denial/cancellation proceedings, refute and belie Velasco's position that the COMELEC improperly ruled on his right to vote when it cancelled his COC. The tribunals given authority by law and who actually ruled on whether Velasco should have the right to vote in Sasmuan, Pampanga were the ERB, the MTC, and subsequently, the RTC. The COMELEC did not so rule; it merely recognized the RTC's final and executory ruling on the matter.

This conclusion is not a hairsplitting sophistry, but one based on clear distinctions drawn by the law. As above pointed out, inclusion/exclusion and COC denial/cancellation proceedings, while they may ultimately have common factual bases, are still proceedings poles apart in terms of the issues, reliefs, and remedies involved. That at some point they may converge (as in this case, where the COC denial/cancellation proceeding relied on and used the results of the voters' inclusion/exclusion proceeding) does not erase the distinctions between them. In the context of this case, it does not mean that the COMELEC - commonly with the ERB, the MTC and the RTC - ruled on Velasco's right to vote because the COMELEC relied on the latter's ruling.

In *Domino v. COMELEC*[9] - where this Court faced the contention that the decision of the first level court in an exclusion proceeding on the issue of residence is final and conclusive on the COMELEC hearing a COC

denial/cancellation proceeding under Section 78 of the OED - we ruled that the factual findings of the trial court and its resultant conclusions in the inclusion/exclusion proceedings on matters other than the right to vote in the precinct within its territorial jurisdiction are not conclusive on and do not rise to the level of a *res judicata* ruling with respect to the COMELEC.[10] The reason is that inclusion/exclusion proceedings, while judicial in character, are summary proceedings.[11] We further added that a decision in an inclusion/exclusion proceeding does not operate as a bar to any future action in any other election that a party may take concerning his right to be registered as a voter.[12] Otherwise stated, a ruling on the right to vote by the trial court for a specific election is binding on the COMELEC. By clear implication, the COMELEC itself does not rule on the right to vote by recognizing in a Sec. 78 COC denial/cancellation proceeding the final and executory ruling by a court, as mandated by law, in an inclusion/exclusion proceeding.

Velasco's Qualifications/Disqualifications as a Voter

Whether Velasco possesses all the qualifications and none of the disqualifications to register as a voter of Sasmuan, Pampanga is a matter that is not directly before us as his inclusion as a Sasmuan voter is not before us. As the COMELEC did, we rely on the final and executory RTC ruling excluding Velasco from the Sasmuan voters' list. We observe, however, that at the time he filed his application for registration with the COMELEC local office on October 13, 2006, Velasco was a dual citizen. The records show that Velasco renounced his American citizenship only on March 28, 2007,[13] although he secured his dual citizenship status as early as July 31, 2006 at the Philippine Consulate in San Francisco, California.[14] Under his dual citizenship status, he possessed the right to vote in Philippine elections through the absentee voting scheme under Republic Act No. 9189 (the Overseas Absentee Voting Law or the OAVL)[15] as we ruled in *Nicolas-Lewis v. COMELEC*.[16] In *Macalintal v. COMELEC*,[17] we significantly said that absentee voters are exempted from the constitutional residency requirement for regular Philippine voters. Thus, the residency requirements we cited above under the VRA and the LGC do not apply to Velasco, assuming he registered as a dual citizen/absentee voter.

By law, however, the right of dual citizens who vote as absentee voters pertains only to the election of national officials, specifically: the president, the vice-president, the senators, and party-list representatives.[18] Thus, Velasco was not eligible to vote as an absentee voter in the local election of 2007. In fact, the records do not show that Velasco ever registered as an absentee voter for the 2007 election.[19]

On the other hand, Velasco could not have registered as a regular voter because he did not possess the residency requirement of one-year stay in the Philippines and six-months stay in the municipality where he proposed to vote at the time of the election. The records show that he arrived in the Philippines only on September 14, 2006 and applied for registration on October 13 of that year[20] for the election to be held in May of the following year (2007). To hark back and compare his case to a similar case, *Coquilla v. COMELEC*,[21] Velasco, before acquiring his dual citizenship status, was an American citizen who had lost his residency and domiciliary status in the Philippines; whose sojourn in the Philippines was via a visitor's visa; and who never established permanent residence in the Philippines. Like *Coquilla* before him, Velasco could not have therefore validly registered as a regular voter eight months before the May 2007 local elections.

The Due Process Issue.

Finally, we see no merit in Velasco's argument that the COMELEC annulled his proclamation as Mayor without due process. The nullification of his proclamation as a winning candidate was an outcome - a necessary legal consequence - of the cancellation of his COC pursuant to Section 78 of the OEC. A COC cancellation proceeding essentially partakes of the nature of a disqualification case.[22] In the present case, Velasco filed an Answer to Panlaqui's petition to cancel or deny due course to his (Velasco's) COC; hence, he was afforded the opportunity to

be heard in the cancellation of his COC.

Under the combined application of Sections 6[23] and 7[24] of Republic Act No. 6646,[25] candidates who are disqualified by final judgment before the election shall not be voted for and the votes cast for them shall not be counted. If the disqualification or COC cancellation/denial case is not resolved before election day, the proceedings shall continue even after the election and the proclamation of the winner.[26] In the meanwhile, the candidate may be voted for and be proclaimed if he or she wins, but the COMELEC's jurisdiction to deny due course and cancel his or her COC continues. This rule applies even if the candidate facing disqualification is voted for and receives the highest number of votes,[27] and even if the candidate is proclaimed and has taken his oath of office.[28] The only exception to this rule is in the case of congressional or senatorial candidates with unresolved disqualification or COC denial/cancellation cases after the elections. Pursuant to Section 17 of Article VI of the Constitution, the COMELEC ipso jure loses jurisdiction over these unfinished cases in favor of the respective Senate or the House of Representatives electoral tribunals after the candidates take their oath of office.[29]

Under these circumstances, Velasco's claim of denial of due process is misplaced since he was given the opportunity to be heard in a proceeding that would result in the annulment of his proclamation; due process was duly served because its essence is the opportunity to be heard and this was fully given to Velasco.[30]

In sum, the COMELEC resolutions canceling Velasco's COC are procedurally and substantively correct, thus negating the grave abuse of discretion that Velasco alleges.

As our final point, we are aware that Velasco won the May 14, 2007 mayoralty election in Sasman. We recognize, too, that we have ruled in the past that a candidate's victory in the election may be considered a sufficient basis to rule in favor of the candidate sought to be disqualified if the main issue involves defects in the candidate's certificate of candidacy. We said that while provisions relating to certificates of candidacy are mandatory in terms, it is an established rule of interpretation as regards election laws, that mandatory provisions requiring certain steps before elections will be construed as directory after the elections, to give effect to the will of the people. We so ruled in *Quizon v. COMELEC* and *Saya-ang v. COMELEC*. [31]

The present case perhaps presents the proper time and opportunity to fine-tune our above ruling. We say this with the realization that a blanket and unqualified reading and application of this ruling can be fraught with dangerous significance for the rule of law and the integrity of our elections. For one, such blanket/unqualified reading may provide a way around the law that effectively negates election requirements aimed at providing the electorate with the basic information to make an informed choice about a candidate's eligibility and fitness for office.

The first requirement that may fall when an unqualified reading is made is Section 39 of the LGC which specifies the basic qualifications of local government officials. Equally susceptible of being rendered toothless is Section 74 of the OEC that sets out what should be stated in a COC. Section 78 may likewise be emasculated as mere delay in the resolution of the petition to cancel or deny due course to a COC can render a Section 78 petition useless if a candidate with false COC data wins. To state the obvious, candidates may risk falsifying their COC qualifications if they know that an election victory will cure any defect that their COCs may have. Election victory then becomes a magic formula to bypass election eligibility requirements.

In the process, the rule of law suffers; the clear and unequivocal legal command, framed by a Congress representing the national will, is rendered inutile because the people of a given locality has decided to vote a candidate into office despite his or her lack of the qualifications Congress has determined to be necessary.

In the present case, Velasco is not only going around the law by his claim that he is registered voter when he is

not, as has been determined by a court in a final judgment. Equally important is that he has made a material misrepresentation under oath in his COC regarding his qualification. For these violations, he must pay the ultimate price - the nullification of his election victory. He may also have to account in a criminal court for making a false statement under oath, but this is a matter for the proper authorities to decide upon.

We distinguish our ruling in this case from others that we have made in the past by the clarification that COC defects beyond matters of form and that involve material misrepresentations cannot avail of the benefit of our ruling that COC mandatory requirements before elections are considered merely directory after the people shall have spoken. A mandatory and material election law requirement involves more than the will of the people in any given locality. Where a material COC misrepresentation under oath is made, thereby violating both our election and criminal laws, we are faced as well with an assault on the will of the people of the Philippines as expressed in our laws. In a choice between provisions on material qualifications of elected officials, on the one hand, and the will of the electorate in any given locality, on the other, we believe and so hold that we cannot choose the electorate will. The balance must always tilt in favor of upholding and enforcing the law. To rule otherwise is to slowly gnaw at the rule of law.

WHEREFORE, we DISMISS the petition for lack of merit. The Status Quo Order we issued is hereby ordered IMMEDIATELY LIFTED. We DECLARE that there is no more legal impediment or obstacle to the implementation of the assailed COMELEC resolutions. No costs.

SO ORDERED.

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

[1] G.R. No. 88831, November 8, 1990, 191 SCRA 229.

[2] Sec. 138. Jurisdiction in inclusion and exclusion cases. - The Municipal and Metropolitan Trial Courts shall have original and exclusive jurisdiction over all cases of inclusion and exclusion of voters from the list in their respective cities or municipalities. Decisions of the Municipal or Metropolitan Trial Courts may be appealed by the aggrieved party to the Regional Trial Courts within five (5) days from receipt of notice thereof. Otherwise, said decision shall become final and executory. The regional trial court shall decide the appeal within ten (10) days from the time it is received and the decision shall become final and executory. No motion for reconsideration shall be entertained [As amended by Section 33 of Republic Act No. 8189].

[3] G.R. No. 157013, July 10, 2003, 405 SCRA 614.

[4] Leyley v. Commission on Elections, G.R. No. 160061, October 11, 2006, 504 SCRA 217, citing Sarangani v. Commission on Elections, G.R. Nos. 155560-62, November 11, 2003, 415 SCRA 614.

[5] See: Intestate Estate of Carmen de Luna vs. Intermediate Appellate Court, G. R. No. 72424, February 13, 1989, 170 SCRA 246; Lalican vs. Vergara, G.R. No. 108619, July 31, 1997.

[6] Ugdoracion v. Commission on Elections, G.R. No. 179851, April 18, 2008, citing Lluz v. COMELEC, G.R. No. 172840, June 7, 2007, 523 SCRA 456; Salcedo II v. COMELEC, G.R. No. 135886, August 16, 1999, 312 SCRA 447.

[7] Ibid.

[8] Section 39 of Republic Act No. 7160, otherwise known as the Local Government Code.

[9] G.R. No. 134015, July 19, 1999, 310 SCRA 546, 564.

[10] Ibid.

[11] *Tan-Cohon v. Election Registrar* (G.R. No. L-29166, August 29, 1969, 29 SCRA 244) where we observed that it is ridiculous to suppose that [...] an important and intricate matter of citizenship may be passed upon and determined with finality in such a summary and peremptory proceeding as that of inclusion and exclusion of persons in the registry list of voters; even if the City Court had granted appellant's petition for inclusion in the permanent list of voters on the allegation that she is a Filipino citizen qualified to vote, her alleged Filipino citizenship would still have been left open to question.

[12] Ibid.

[13] *Rollo*, p. 96.

[14] *Id.*, p. 93.

[15] An Act Providing for a System of Overseas Absentee Voting by Qualified Citizens of the Philippines Abroad, Appropriating Funds Therefor, and for Other Purposes, Enacted February 13, 2003.

[16] G.R. No. 162759, August 4, 2006, 497 SCRA 649.

[17] *Supra* note 3.

[18] Sec. 4. Coverage. - All citizens of the Philippines abroad, who are not otherwise disqualified by law, at least eighteen (18) years of age on the day of elections, may vote for president, vice-president, senators and party-list representatives.

[19] See *Rollo*, p. 49. There was no clear indicator that the registration is pursuant to, or in compliance with the OAVL and its implementing rules - COMELEC Resolution No. 6117 dated May 14, 2003 and COMELEC Resolution No. 7447 dated March 18, 2005, as amended by COMELEC Resolution No. 7694, series of 2006.

[20] *Rollo*, p. 49.

[21] G.R. No. 151914, July 31, 2002, 385 SCRA 385.

[22] See *Salcedo II v. Commission on Elections*, G.R. No. 135886, August 1, 1999, 312 SCRA 447, 456-457.

[23] 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.

[24] Section 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.

[25] An Act Introducing Additional Reforms in the Electoral System and for Other Purposes; Enacted January 5, 1988

[26] *Coquilla v. Commission on Elections*, *supra* note 21.

[27] Ibid.

[28] Ibid, citing *Abella v. Commission on Elections*, G.R. No. 100710 September 3, 1991, 201 SCRA 253 and *Salcedo II v. Commission on Elections*, *supra* note 22.

[29] See *Domino*, *supra* note 9.

[30] See *Bautista v. Commission on Elections*, G.R. Nos. 154796-97, October 23, 2003, 414 SCRA 299, 312-313.

[31] *Quizon v. COMELEC*, G.R. No. 177927, February 15, 2008, 545 SCRA 635, and *Saya-ang, Sr. v. Commission on Elections*, G.R. No. 155807, November 28, 2003, 416 SCRA 650.

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