

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

G.R. No. 188671. February 24, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The present petition is one for certiorari.

Petitioner Mozart Panlaqui (Panlaqui) assails the Commission on Elections (Comelec) En Banc Resolution of June 17, 2009 denying his motion for proclamation, which he filed after this Court affirmed in G.R. No. 180051[1] the nullification of the proclamation of private respondent Nardo Velasco (Velasco) as mayor of Sasmuan, Pampanga.

Velasco was born in Sasmuan on June 22, 1952 to Filipino parents. He married Evelyn Castillo on June 29, 1975. In 1983, he moved to the United States where he subsequently became a citizen.

Upon Velasco's application for dual citizenship under Republic Act No. 9225[2] was approved on July 31, 2006, he took on even date his oath of allegiance to the Republic of the Philippines and returned to the Philippines on September 14, 2006.

On October 13, 2006, Velasco applied for registration as a voter of Sasmuan, which application was denied by the Election Registration Board (ERB). He thus filed a petition for the inclusion of his name in the list of voters before the Municipal Trial Court (MTC) of Sasmuan which, by Decision of February 9, 2007, reversed the ERB's decision and ordered his inclusion in the list of voters of Sasmuan.

On appeal, the Regional Trial Court (RTC) of Guagua, Pampanga, by Decision of March 1, 2007, reversed[3] the MTC Decision, drawing Velasco to elevate the matter via Rule 42 to the Court of Appeals which, by Amended Decision[4] of August 19, 2008, dismissed the appeal for lack of jurisdiction.

In the meantime, Velasco filed on March 28, 2007 his Certificate of Candidacy (COC) for mayor of Sasmuan, therein claiming his status as a registered voter. Panlaqui, who vied for the same position, thereupon filed before the Comelec a Petition to Deny Due Course To and/or To Cancel Velasco's COC based on gross material misrepresentation as to his residency and, consequently, his qualification to vote.

In the electoral bout of May 2007, Velasco won over Panlaqui as mayor of Sasmuan. As the Comelec failed to resolve Panlaqui's petition prior to the elections, Velasco took his oath of office and assumed the duties of the office.

Finding material misrepresentation on the part of Velasco, the Comelec cancelled his COC and nullified his proclamation, by Resolutions of July 6, 2007 and October 15, 2007, which this Court affirmed in G.R. No. 180051.

Panlaqui thereafter filed a motion for proclamation which the Comelec denied by the assailed Resolution, pointing

out that the rule on succession does not operate in favor of Panlaqui as the second placer because Velasco was not disqualified by final judgment before election day.

Hence, the present petition which imputes grave abuse of discretion on the part of the Comelec for not regarding the RTC March 1, 2007 Decision as the final judgment of disqualification against Velasco prior to the elections, so as to fall within the ambit of *Cayat v. Commission on Elections*[5] on the exception to the doctrine on the rejection of the second placer.

Velasco filed his Comment of September 18, 2009 with motion to consolidate the present case with G.R. No. 189336, his petition challenging the Comelec's September 8, 2009 Order which directed him to vacate his mayoralty post for the incumbent vice-mayor to assume office as mayor. A perusal of the records of the petition shows, however, that it had already been dismissed by the Court by Resolution of October 6, 2009.[6]

In his present petition, Panlaqui implores this Court to apply in his favor the case of *Cayat* where the Court affirmed, *inter alia*, the Comelec Order directing the proclamation of the second placer as Mayor of Buguias, Benguet in this wise:

There is no doubt as to the propriety of Palileng's proclamation for two basic reasons.

First, the COMELEC First Division's Resolution of 12 April 2004 cancelling *Cayat's* certificate of candidacy due to disqualification became final and executory on 17 April 2004 when *Cayat* failed to pay the prescribed filing fee. Thus, Palileng was the only candidate for Mayor of Buguias, Benguet in the 10 May 2004 elections. Twenty-three days before election day, *Cayat* was already disqualified by final judgment to run for Mayor in the 10 May 2004 elections. As the only candidate, Palileng was not a second placer. On the contrary, Palileng was the sole and only placer, second to none. The doctrine on the rejection of the second placer, which triggers the rule on succession, does not apply in the present case because Palileng is not a second-placer but the only placer. Consequently, Palileng's proclamation as Mayor of Buguias, Benguet is beyond question.

Second, there are specific requirements for the application of the doctrine on the rejection of the second placer. The doctrine will apply in *Bayacsan's* favor, regardless of his intervention in the present case, if two conditions concur: (1) the decision on *Cayat's* disqualification remained pending on election day, 10 May 2004, resulting in the presence of two mayoralty candidates for Buguias, Benguet in the elections; and (2) the decision on *Cayat's* disqualification became final only after the elections.[7] (*emphasis and italics in the original; underscoring supplied*)

Repackaging the present petition in *Cayat's* fashion, Panlaqui asserts that the RTC March 1, 2007 Decision in the voter's inclusion proceedings must be considered as the final judgment of disqualification against Velasco, which decision was issued more than two months prior to the elections. Panlaqui posits that when Velasco's petition for inclusion was denied, he was also declared as disqualified to run for public office.

Unwrapping the present petition, the Court finds that the true color of the issue of distinction between a petition for inclusion of voters in the list and a petition to deny due course to or cancel a certificate of candidacy has already been defined in *Velasco v. Commission on Elections*[8] where the Court held that the two proceedings may ultimately have common factual bases but they are poles apart in terms of the issues, reliefs and remedies involved, thus:

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. x x x[9] (*underscoring supplied*)

Voters' inclusion/exclusion proceedings, on the one hand, essentially involve the 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.[10]

On the other hand, COC denial/cancellation proceedings involve the issue of whether there is a false representation of a material fact. The false representation must necessarily pertain not to a mere innocuous mistake but to a material fact or those that refer to a candidate's qualifications for elective office. Apart from the requirement of materiality, the false representation must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible or, otherwise stated, with the intention to deceive the electorate as to the would-be candidate's qualifications for public office.[11]

In Velasco, the Court rejected Velasco's contention that the Comelec improperly ruled on the right to vote when it cancelled his COC. The Court stated that the Comelec merely relied on or recognized the RTC's final and executory decision on the matter of the right to vote in the precinct within its territorial jurisdiction.

In the present petition, it is Panlaqui's turn to proffer the novel interpretation that the RTC properly cancelled Velasco's COC when it ruled on his right to vote. The Court rejects the same.

It is not within the province of the RTC in a voter's inclusion/exclusion proceedings to take cognizance of and determine the presence of a false representation of a material fact. It has no jurisdiction to try the issues of whether the misrepresentation relates to material fact and whether there was an intention to deceive the electorate in terms of one's qualifications for public office. The finding that Velasco was not qualified to vote due to lack of residency requirement does not translate into a finding of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render him ineligible.

Assuming arguendo the plausibility of Panlaqui's theory, the Comelec correctly observed that when the RTC issued its March 1, 2007 Decision, there was yet no COC to cancel because Velasco's COC was filed only on March 28, 2007. Indeed, not only would it be in excess of jurisdiction but also beyond the realm of possibility for the RTC to rule that there was deliberate concealment on the part of Velasco when he stated under oath in his COC that he is a registered voter of Sasmuan despite his knowledge of the RTC decision which was yet forthcoming.

IN FINE, the Comelec did not gravely abuse its discretion when it denied Panlaqui's motion for proclamation. Since Velasco's disqualification as a candidate had not become final before the elections, the Comelec properly applied the rule on succession.

x x x To simplistically assume that the second placer would have received the other votes would be to substitute our judgment for the mind of the voter. The second placer is just that, a second placer. He lost the elections. He was repudiated by either a majority or plurality of voters. He could not be considered the first among qualified candidates because in a field which excludes the disqualified candidate, the conditions would have substantially changed. We are not prepared to extrapolate the results under such circumstances.

To allow the defeated and repudiated candidate to take over the mayoralty despite his rejection by the electorate is to disenfranchise them through no fault on their part, and to undermine the importance and the meaning of democracy and the right of the people to elect officials of their choice.

Theoretically, the second placer could receive just one vote. In such a case, it would be absurd to proclaim the totally repudiated candidate as the voters' choice. x x x[12]

WHEREFORE, the petition is DISMISSED. The assailed June 17, 2009 Resolution of the Commission on Elections is AFFIRMED.

SO ORDERED.

Puno, C.J., Carpio, Corona, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, and Mendoza, JJ., concur.

[1] Velasco v. Commission on Elections, G.R. No. 180051, December 24, 2008, 575 SCRA 590.

[2] Citizenship Retention and Re-Acquisition Act of 2003 (August 29, 2003).

[3] The RTC found that Velasco was ineligible to vote since he failed to comply with the residency requirement, citing the rule that naturalization in a foreign country results in the abandonment of the domicile in the Philippines.

[4] The appellate court reversed its March 13, 2008 Decision granting Velasco's appeal.

[5] G.R. No. 163776, April 24, 2007, 522 SCRA 23, where the doctrine on the rejection of the second placer found no application.

[6] The Court likewise denied the motion for reconsideration, by Resolution of December 15, 2009.

[7] Cayat v. Commission on Elections, *supra* note 5 at 43.

[8] *Supra* note 1.

[9] *Id.* at 606

[10] *Ibid.*

[11] *Id.* at 602-604.

[12] Kare v. Commission on Elections, G.R. No. 157526, April 28, 2004, 428 SCRA 264, 274.

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