

SERGIO G. AMORA, JR., PETITIONER, VS. COMMISSION ON ELECTIONS AND ARNIELO S. OLANDRIA, RESPONDENTS.

G.R. No. 192280. January 25, 2011

Ponente: NACHURA, J.

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NACHURA, J.:

Before us is a petition for certiorari under Rule 64, in relation to Rule 65, of the Rules of Court, seeking to annul and set aside the Resolutions dated April 29, 2010[1] and May 17, 2010,[2] respectively, of the Commission on Elections (COMELEC) in SPA No. 10-046 (DC).

First, the undisputed facts.

On December 1, 2009, petitioner Sergio G. Amora, Jr. (Amora) filed his Certificate of Candidacy (COC) for Mayor of Candijay, Bohol. At that time, Amora was the incumbent Mayor of Candijay and had been twice elected to the post, in the years 2004 and 2007.

To oppose Amora, the Nationalist People's Coalition (NPC) fielded Trygve L. Olaivar (Olaivar) for the mayoralty post. Respondent Arnielo S. Olandria (Olandria) was one of the candidates for councilor of the NPC in the same municipality.

On March 5, 2010, Olandria filed before the COMELEC a Petition for Disqualification against Amora. Olandria alleged that Amora's COC was not properly sworn contrary to the requirements of the Omnibus Election Code (OEC) and the 2004 Rules on Notarial Practice. Olandria pointed out that, in executing his COC, Amora merely presented his Community Tax Certificate (CTC) to the notary public, Atty. Oriculo Granada (Atty. Granada), instead of presenting competent evidence of his identity. Consequently, Amora's COC had no force and effect and should be considered as not filed.

Amora traversed Olandria's allegations in his Answer cum Position Paper.[3] He countered that:

1. The Petition for Disqualification is actually a Petition to Deny Due Course or cancel a certificate of candidacy. Effectively, the petition of Olandria is filed out of time;
2. Olandria's claim does not constitute a proper ground for the cancellation of the COC;
3. The COC is valid and effective because he (Amora) is personally known to the notary public, Atty. Granada, before whom he took his oath in filing the document;
4. Atty. Granada is, in fact, a close acquaintance since they have been members of the League of Municipal Mayors, Bohol Chapter, for several years; and
5. Ultimately, he (Amora) sufficiently complied with the requirement that the COC be under oath.

As previously adverted to, the Second Division of the COMELEC granted the petition and disqualified Amora from running for Mayor of Candijay, Bohol.

Posthaste, Amora filed a Motion for Reconsideration[4] before the COMELEC en banc. Amora reiterated his previous arguments and emphasized the asseverations of the notary public, Atty. Granada, in the latter's affidavit,[5] to wit:

1. The COMELEC's (Second Division's) ruling is contrary to the objectives and basic principles of election laws which uphold the primacy of the popular will;
2. Atty. Granada states that while he normally requires the affiant to show competent evidence of identity, in Amora's case, however, he accepted Amora's CTC since he personally knows him;
3. Apart from the fact that Amora and Atty. Granada were both members of the League of Municipal Mayors, Bohol Chapter, the two consider each other as distant relatives because Amora's mother is a Granada;
4. It is a matter of judicial notice that practically everybody knows the Mayor, most especially lawyers and notaries public, who keep themselves abreast of developments in local politics and have frequent dealings with the local government; and
5. In all, the COC filed by Amora does not lack the required formality of an oath, and thus, there is no reason to nullify his COC.

Meanwhile, on May 10, 2010, national and local elections were held. Amora obtained 8,688 votes, equivalent to 58.94% of the total votes cast, compared to Olaivar's 6,053 votes, equivalent to only 41.06% thereof. Subsequently, the Municipal Board of Canvassers of Candijay, Bohol, proclaimed Amora as the winner for the position of Municipal Mayor of Candijay, Bohol.[6]

A week thereafter, or on May 17, 2010, in another turn of events, the COMELEC en banc denied Amora's motion for reconsideration and affirmed the resolution of the COMELEC (Second Division). Notably, three (3) of the seven (7) commissioners dissented from the majority ruling. Commissioner Gregorio Larrazabal (Commissioner Larrazabal) wrote a dissenting opinion, which was concurred in by then Chairman Jose A.R. Melo and Commissioner Rene V. Sarmiento.

In denying Amora's motion for reconsideration and upholding Olandria's petition for disqualification of Amora, the COMELEC ratiocinated, thus:

[Amora] himself admitted in his Motion that the Second Division was correct in pointing out that the CTC is no longer a competent evidence of identity for purposes of notarization.

The COC therefore is rendered invalid when [petitioner] only presented his CTC to the notary public. His defense that he is personally known to the notary cannot be given recognition because the best proof [of] his contention could have been the COC itself. However, careful examination of the jurat portion of the COC reveals no assertion by the notary public that he personally knew the affiant, [petitioner] herein. Belated production of an Affidavit by the Notary Public cannot be given weight because such evidence could and should have been produced at the earliest possible opportunity.

The rules are absolute. Section 73 of the Election Code states:

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

Under the 2004 Rules on Notarial Practice of 2004 (Rules), the requirements of notarization of an oath are:

"Section 2. Affirmation or Oath. - The term 'Affirmation' or 'Oath' refers to an act in which an individual on a single occasion:

- (a) appears in person before the notary public;
- (b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and
- (c) avows under penalty of law to the whole truth of the contents of the instrument or document."

The required form of identification is prescribed in [S]ection 12 of the same Rules, to wit:

"Section 12. Competent Evidence of Identity. - The phrase `competent evidence of identity' refers to the identification of an individual based on:

- (a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual. x x x."

It is apparent that a CTC, which bears no photograph, is no longer a valid form of identification for purposes of Notarization of Legal Documents. No less than the Supreme Court itself, when it revoked the Notarial Commission of a member of the Bar in *Baylon v. Almo*, reiterated this when it said:

"As a matter of fact, recognizing the established unreliability of a community tax certificate in proving the identity of a person who wishes to have his document notarized, we did not include it in the list of competent evidence of identity that notaries public should use in ascertaining the identity of persons appearing before them to have their documents notarized."

Seeking other remedies, [Amora] maintained that Section 78 of the Election Code governs the Petition. Said section provides that:

"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 the 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."

[Amora] however failed to note that the Petition relies upon an entirely different ground. The Petition has clearly stated that it was invoking Section 73 of the Election Code, which prescribes the mandatory requirement of filing a sworn certificate of candidacy. As properly pointed out by [Olandria], he filed a Petition to Disqualify for Possessing Some Grounds for Disqualification, which, is governed by COMELEC Resolution No. 8696, to wit:

"B. PETITION TO DISQUALIFY A CANDIDATE PURSUANT TO SECTION 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 Section 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, 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 ground that the candidate does not possess all the qualifications as provided for by the Constitution or by existing law or who possesses some grounds for disqualification as provided for by the Constitution or by existing law."

x x x x

Finally, we do not agree with [Amora] when he stated that the Second Division's Resolution "practically supplanted congress by adding another ground for disqualification, not provided in the omnibus election code or the local government code. The constitution is very clear that it is congress that shall prescribe the qualifications (and disqualifications) of candidates for local government positions." These grounds for disqualification were laid down in both laws mentioned by [Amora] and COMELEC Resolution 8696.[7]

Hence, this petition for certiorari imputing grave abuse of discretion to the COMELEC. On June 15, 2010, we issued a Status Quo Ante Order and directed respondents to comment on the petition. As directed, Olandria and the COMELEC filed their respective Comments[8] which uniformly opposed the petition. Thereafter, Amora filed his Reply.[9]

Amora insists that the Petition for Disqualification filed by Olandria is actually a Petition to Deny Due Course since the purported ground for disqualification simply refers to the defective notarization of the COC. Amora is adamant that Section 73 of the OEC pertains to the substantive qualifications of a candidate or the lack thereof as grounds for disqualification, specifically, the qualifications and disqualifications of elective local officials under the Local Government Code (LGC) and the OEC. Thus, Olandria's petition was filed way beyond the reglementary period of twenty-five (25) days from the date of the filing of the disputed COC.

Moreover, Amora maintains that his COC is properly notarized and not defective, and the presentation of his CTC to the notary public to whom he was personally known sufficiently complied with the requirement that the COC be under oath. Amora further alleges that: (1) Olaivar, his opponent in the mayoralty post, and likewise a member of the NPC, is purportedly a fraternity brother and close associate of Nicodemo T. Ferrer (Commissioner Ferrer), one of the commissioners of the COMELEC who disqualified him; and (2) Olaivar served as Consultant for the COMELEC, assigned to the Office of Commissioner Ferrer.

Olandria and the COMELEC reiterated the arguments contained in the COMELEC en banc resolution of May 17, 2010.

Amora's petition is meritorious.

We find that the COMELEC ruling smacks of grave abuse of discretion, a capricious and whimsical exercise of judgment equivalent to lack of jurisdiction. Certiorari lies where a court or any tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion.[10]

In this case, it was grave abuse of discretion to uphold Olandria's claim that an improperly sworn COC is equivalent to possession of a ground for disqualification. Not by any stretch of the imagination can we infer this as an additional ground for disqualification from the specific wording of the OEC in Section 68, which reads:

SEC. 68. Disqualifications. - Any candidate who, in an action or protest in which he is 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, sub-paragraph 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 elections laws.

and of Section 40 of the LGC, which provides:

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

- (a) Those sentenced 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) Fugitives 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.

It is quite obvious that the Olandria petition is not based on any of the grounds for disqualification as enumerated in the foregoing statutory provisions. Nowhere therein does it specify that a defective notarization is a ground for the disqualification of a candidate. Yet, the COMELEC would uphold that petition upon the outlandish claim that it is a petition to disqualify a candidate "for lack of qualifications or possessing some grounds for disqualification."

The proper characterization of a petition as one for disqualification under the pertinent provisions of laws cannot be made dependent on the designation, correctly or incorrectly, of a petitioner. The absurd interpretation of Olandria, respondent herein, is not controlling; the COMELEC should have dismissed his petition outright.

A petition for disqualification relates to the declaration of a candidate as ineligible or lacking in quality or accomplishment fit for the position of mayor. The distinction between a petition for disqualification and the formal requirement in Section 73 of the OEC that a CoC be under oath is not simply a question of semantics as the statutes list the grounds for the disqualification of a candidate.

Recently, we have had occasion to distinguish the various petitions for disqualification and clarify the grounds therefor as provided in the OEC and the LGC. We declared, thus:

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*, 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.[11]

Apart from the qualifications provided for in the Constitution, the power to prescribe additional qualifications for elective office and grounds for disqualification therefrom, consistent with the constitutional provisions, is vested in Congress.[12] However, laws prescribing qualifications for and disqualifications from office are liberally

construed in favor of eligibility since the privilege of holding an office is a valuable one.[13] We cannot overemphasize the principle that where a candidate has received popular mandate, all possible doubts should be resolved in favor of the candidate's eligibility, for to rule otherwise is to defeat the will of the people.[14]

In stark contrast to the foregoing, the COMELEC allowed and confirmed the disqualification of Amora although the latter won, and was forthwith proclaimed, as Mayor of Candijay, Bohol.

Another red flag for the COMELEC to dismiss Olandria's petition is the fact that Amora claims to personally know the notary public, Atty. Granada, before whom his COC was sworn. In this regard, the dissenting opinion of Commissioner Larrazabal aptly disposes of the core issue:

With all due respect to the well-written Ponencia, I respectfully voice my dissent. The primary issue herein is whether it is proper to disqualify a candidate who, in executing his Certificate of Candidacy (COC), merely presented to the Notary Public his Community Tax Certificate.

The majority opinion strictly construed the 2004 Rules on Notarial Practice (the "2004 Notarial Rules") when it provided that valid and competent evidence of identification must be presented to render Sergio G. Amora, Jr.'s [petitioner's] COC valid. The very wording of the 2004 Notarial Rules supports my view that the instant motion for reconsideration ought to be granted, to wit:

Section 2. Affirmation or Oath . - The term "Affirmation" or "Oath" refers to an act in which an individual on a single occasion:

- (a) appears in person before the notary public;
- (b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and
- (c) avows under penalty of law to the whole truth of the contents of the instrument or document.

As quoted supra, competent evidence of identity is not required in cases where the affiant is personally known to the Notary Public, which is the case herein. The records reveal that [petitioner] submitted to this Commission a sworn affidavit executed by Notary Public Oriculo A. Granada (Granada), who notarized [petitioner's] COC, affirming in his affidavit that he personally knows [petitioner].

[Respondent], on the other hand, presented no evidence to counter Granada's declarations. Hence, Granada['s] affidavit, which narrates in detail his personal relation with [petitioner], should be deemed sufficient.

The purpose of election laws is to give effect to, rather than frustrate, the will of the voters. The people of Candijay, Bohol has already exercised their right to suffrage on May 10, 2010 where [petitioner] was one of the candidates for municipal mayor. To disqualify [petitioner] at this late stage simply due to an overly strict reading of the 2004 Notarial Rules will effectively deprive the people who voted for him their rights to vote.

The Supreme Court's declaration in *Petronila S. Rulloda v. COMELEC et al.* must not be taken lightly:

Technicalities and procedural niceties in election cases should not be made to stand in the way of the true will of the electorate. Laws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections.

Election contests involve public interest, and technicalities and procedural barriers must yield if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. The Court frowns upon any interpretation of the law that would hinder in any way not only the free and intelligent casting of the votes in an election but also the correct ascertainment of the results.[15]

Our ruling herein does not do away with the formal requirement that a COC be sworn. In fact, we emphasize that the filing of a COC is mandatory and must comply with the requirements set forth by law.[16]

Section 2 of the 2004 Rules on Notarial Practice lists the act to which an affirmation or oath refers:

Sec. 2. Affirmation or Oath. -- The term "Affirmation" or "Oath" refers to an act in which an individual on a single occasion:

(a) appears in person before the notary public;

(b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and

(c) avows under penalty of law to the whole truth of the contents of the instrument or document.

In this case, however, contrary to the declarations of the COMELEC, Amora complied with the requirement of a sworn COC. He readily explained that he and Atty. Granada personally knew each other; they were not just colleagues at the League of Municipal Mayors, Bohol Chapter, but they consider each other as distant relatives. Thus, the alleged defect in the oath was not proven by Olandria since the presentation of a CTC turned out to be sufficient in this instance. On the whole, the COMELEC should not have brushed aside the affidavit of Atty. Granada and remained inflexible in the face of Amora's victory and proclamation as Mayor of Candijay, Bohol.

WHEREFORE, the petition is GRANTED. The Resolutions of the Commission on Elections in SPA No. 10-046 (DC) dated April 29, 2010 and May 17, 2010, respectively, are ANULLED and SET ASIDE.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Leonardo-De Castro, Brion, Peralta, Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and Sereno, JJ., concur.

Velasco, Jr., J., no part, due to relationship to a party.

Bersamin, J., on leave.

[1] Rollo, pp. 59-64.

[2] Id. at 65-72.

[3] Id. at 96-102.

[4] Id. at 115-136.

[5] Id. at 77-78.

[6] Id. at 144.

[7] Id. at 68-72.

[8] Id. at 161-172, 180-190.

[9] Id. at 204-227.

[10] RULES OF COURT, Rule 65, Sec. 1 .

[11] *Fermin v. COMELEC*, G.R. Nos. 179695 and 182369, December 18, 2008, 574 SCRA 782, 796.

[12] *Dumlao v. COMELEC*, 184 Phil. 369 (1980).

[13] Agpalo, Comments on the Omnibus Election Code (2004), p. 144.

[14] O'Hara v. COMELEC, G.R. Nos. 148941-42, March 12, 2002, 379 SCRA 247.

[15] Rollo, pp. 73-75.

[16] Omnibus Election Code, Secs. 73-74.

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