

FERNANDO V. GONZALEZ, PETITIONER, VS. COMMISSION ON ELECTIONS, RENO G. LIM, STEPHEN C. BICHARA AND THE SPECIAL BOARD OF CANVASSERS CONSTITUTED PER RES. DATED JULY 23, 2010 OF TH...*G.R. No. 192856. March 08, 2011*

Ponente: VILLARAMA, JR., J.

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This is a petition for certiorari, prohibition and mandamus under Rule 65 in relation to Rule 64 of the 1997 Rules of Civil Procedure, as amended, assailing the Resolution[1] dated May 8, 2010 of the Commission on Elections (COMELEC) Second Division and Resolution[2] dated July 23, 2010 of the Commission En Banc, in SPA No. 10-074 (DC).

The facts are uncontroverted.

Petitioner Fernando V. Gonzalez and private respondent Reno G. Lim both filed certificates of candidacy for the position of Representative of the 3rd congressional district of the Province of Albay in the May 10, 2010 elections. Lim was the incumbent congressman of the 3rd district while Gonzalez was former Governor of Albay, having been elected to said position in 2004 but lost his re-election bid in 2007.

On March 30, 2010, a Petition for Disqualification and Cancellation of Certificate of Candidacy (COC)[3] was filed by Stephen Bichara [SPA No. 10-074 (DC)] on the ground that Gonzalez is a Spanish national, being the legitimate child of a Spanish father and a Filipino mother, and that he failed to elect Philippine citizenship upon reaching the age of majority in accordance with the provisions of Commonwealth Act (C.A.) No. 625. It was further alleged that Gonzalez's late registration of his certificate of birth with the Civil Registry of Ligao City on January 17, 2006, even if accompanied by an affidavit of election of Philippine citizenship, was not done within a reasonable time as it was in fact registered 45 years after Gonzalez reached the age of majority on September 11, 1961.

In his Answer,[4] Gonzalez denied having willfully made false and misleading statement in his COC regarding his citizenship and pointed out that Bichara had filed the wrong petition under Section 68 of the Omnibus Election Code (OEC) to question his eligibility as a candidate. Gonzalez also argued that the petition which should have been correctly filed under Section 78 of the OEC was filed out of time. He asserted that he is a Filipino citizen as his Alien Certificate of Registration was issued during his minority. However, he took an Oath of Allegiance to the Republic of the Philippines before the Justice of the Peace in Ligao, Albay on his 21[st] birthday on September 11, 1961. Since then he had comported himself as a Filipino considering that he is married to a Filipina; he is a registered voter who voted during elections; he has been elected to various local positions; he holds a Philippine passport; and most importantly, he has established his life in the Philippines as a Filipino. Gonzalez contended that he is deemed a natural-born Filipino citizen under the 1987 Constitution which includes in the definition of natural-born citizens "[t]hose born before January 17, 1973, of Filipino mothers, who elect

Philippine citizenship upon reaching the age of majority."

On May 8, 2010, the COMELEC's Second Division issued the assailed resolution which decreed:

WHEREFORE, premises considered, we resolve to, as we do hereby, GRANT this Petition. Respondent Fernando Vallejo Gonzalez is hereby declared disqualified to be a candidate for the position of Member of the House of Representatives, 3rd District, Province of Albay, in the forthcoming National and Local Elections on May 10, 2010.

SO ORDERED.[5]

Finding the petition to be both a petition for disqualification and cancellation of COC, the Second Division ruled that the same was filed on time. On the election of Philippine citizenship by Gonzalez, it held that what Gonzalez submitted is a mere photocopy of his oath of allegiance which was not duly certified by the National Statistics Office, and hence there was no compliance with the requirement of filing with the nearest civil registry, the last act required of a valid oath of allegiance under C.A. No. 625. Further, the Second Division found that in the late registration of Gonzalez's birth on January 17, 2006, he declared that he is a citizen of the Philippines; this at best, was his own conclusion, and at worst, conflicts with his purported oath of allegiance for it would have been a superfluity to express his choice of Philippine citizenship by taking the oath of allegiance if he was already a Filipino citizen. And the fact that Gonzalez attended formal schooling in this country, worked in private firms and in the government service, should not take the place of the stringent requirements of constitutional and statutory provisions on acquisition of Philippine citizenship.[6]

Gonzalez thru counsel received a copy of the aforesaid resolution on May 11, 2010 at 5:20 p.m.[7] On even date, Lim petitioned the Provincial Board of Canvassers (PBOC) to consider the votes cast for Gonzalez as stray or not counted and/or suspend his proclamation, citing the Second Division's May 8, 2010 resolution disqualifying Gonzalez as a candidate for the May 10, 2010 elections.[8] The PBOC, however, dismissed the petition stating that the period for filing of a motion for reconsideration of the COMELEC resolution has not yet lapsed, and hence the same is not yet final and executory.[9] Lim appealed the PBOC's dismissal of his petition to the COMELEC (SPC No. 10-006) but his appeal was eventually dismissed after he filed a motion to withdraw the same.[10]

Based on the results of the counting and canvassing of votes, Gonzalez emerged as the winner having garnered a total of 96,000 votes while Lim ranked second with 68,701 votes. On May 12, 2010, the PBOC officially proclaimed Gonzalez as the duly elected Representative of the 3rd district of Albay. Gonzalez took his oath of office on the same day.[11] On May 13, 2010, Bichara filed a Very Urgent Motion to Suspend the Effects of the Proclamation of Fernando V. Gonzalez.[12]

On May 14, 2010, Gonzalez filed a motion for reconsideration of the May 8, 2010 resolution. Gonzalez reiterated that the Second Division's finding that Bichara's petition is both a petition for disqualification and to cancel COC is not borne by the petition itself and contrary to Section 68 of the OEC and COMELEC Resolution No. 8696. Applying Section 78 of the OEC which is the proper petition based on alleged deliberate misrepresentation and false statement in the COC, Gonzalez contended that Bichara's petition was filed out of time. It was further argued that the subsequent election, proclamation and taking of oath of office of Gonzalez are events warranting the dismissal of SPA No. 10-074 (DC). Stressing that the voice of the people must be respected in this case, Gonzalez pointed out that his not being a Filipino was never an issue in the previous elections where he ran and won (Ligao City Mayor for three terms and Governor of Albay from 2004-2007). He claimed that the petition filed by Bichara, who ran against Gonzalez's wife, Linda Passi Gonzalez (for re-election as Ligao City Mayor) in the recently concluded elections was indicative of harassment considering that a similar petition for disqualification

and cancellation of COC was also filed against his wife by Anna Marie C. Bichara, said to be a sister of the petitioner in SPA No. 10-074 (DC).[13]

On May 22, 2010, Lim filed a Motion for Leave to Intervene as Petitioner stating that being a candidate for the same position, he has legal interest in the success of the petition in SPA No. 10-074 (DC).[14]

In its Resolution dated July 23, 2010, the COMELEC En Banc denied the motion for reconsideration and affirmed its finding that Gonzalez failed to prove with sufficient evidence that he had fully complied with the requirements for electing Philippine citizenship under C.A. No. 625. It likewise emphasized that the motion for reconsideration filed by Gonzalez was pro forma and hence it did not suspend the effects of the May 8, 2010 resolution disqualifying him as a candidate, conformably with Sections 1 and 4, Rule 19 of the COMELEC Rules of Procedure in relation to Section 7 of COMELEC Resolution No. 8696. Invoking its power to suspend and set aside the proclamation of winning candidates pursuant to Section 16 of COMELEC Resolution No. 8678 in relation to Section 6 of Republic Act (R.A.) No. 6646,[15] the Commission held that the proclamation of Gonzalez by the PBOC was premature and illegal. Finally, the motion to intervene filed by Lim was found to be proper and was accordingly granted.

The dispositive portion of the resolution reads:

WHEREFORE, premises considered, the Commission (En Banc) RESOLVED to, as it does hereby:

1. ANNUL the invalid proclamation of the respondent Fernando V. Gonzalez as the elected Member of the House of Representative as he is DISQUALIFIED to run and be voted for the position of Member of the House of Representatives in the May 10, 2010 elections;
2. DENY for utter lack of merit the Motion for Reconsideration of respondent FERNANDO V. GONZALEZ; and
3. AFFIRM the Resolution of the Second Division declaring respondent Fernando V. Gonzalez DISQUALIFIED to run and be voted for as such.
4. Immediately CONSTITUTE a Special Provincial Board of Canvassers of Albay who will PROCLAIM RENO G. LIM as the duly elected Member of the House of Representative of the Third District of Albay for being the bona fide candidate who garnered the highest number of votes in the May 10, 2010 elections.

SO ORDERED.[16]

Commissioner Rene V. Sarmiento dissented from the majority ruling denying the motion for reconsideration of Gonzalez, stating that the people of the 3rd District of Albay has already spoken as to who is their choice of Representative in the Lower House of Congress and in case of doubt as to the qualification of the winning candidate, the doubt will be resolved in favor of the will of the people.[17]

A separate opinion was written by Commissioner Armando C. Velasco stating that the COMELEC no longer has jurisdiction to decide on the matter of the qualifications of Gonzalez, the winning candidate who had already been proclaimed, taken his oath and assumed the office as Representative of the 3rd District of Albay, for which reason the COMELEC's jurisdiction ends and that of the House of Representatives Electoral Tribunal (HRET) begins. He likewise disagreed with the majority's conclusion that Gonzalez's proclamation was invalid considering that: (1) records are bereft of indication that the PBOC had been ordered to suspend the proclamation of Gonzalez; (2) the May 8, 2010 Resolution disqualifying Gonzalez had not yet become final and executory; (3) the date of said resolution was not a previously fixed date as required by Section 6 of COMELEC Resolution No. 8696, as the records do not show that the parties have been informed of said date of promulgation beforehand; and (4) the three-day period for the filing of a motion for reconsideration should be reckoned from the date of receipt

by Gonzalez of copy of the resolution which is May 11, 2010, hence the PBOC acted well within its authority in proclaiming Gonzalez. Commissioner Velasco also disagreed with the majority ruling that Gonzalez's motion for reconsideration was pro forma, and maintained that said motion was timely filed which effectively suspended the execution of the May 8, 2010 Resolution. Lastly, he found the order to constitute a Special Provincial Board of Canvassers for the purpose of proclaiming intervenor Lim without basis. Since the May 8, 2010 Resolution was not yet final on election day, the votes cast for Gonzalez cannot be considered stray. Besides, a minority or defeated candidate like Lim cannot be deemed elected to the office in cases where the winning candidate is declared ineligible.[18]

Gonzalez filed the instant petition on July 29, 2010 while Lim filed a Very Urgent Motion For the Issuance of Writ of Execution which the COMELEC granted on August 5, 2010.[19] On August 18, 2010, Lim was proclaimed by a Special Board of Canvassers and subsequently took his oath of office before Assistant State Prosecutor Nolibien N. Quiambao.[20]

In a letter dated August 23, 2010, Lim requested Speaker Feliciano R. Belmonte, Jr. for the administration of his oath and registration in the Roll of the House of Representatives representing the 3rd District of Albay. However, Speaker Belmonte refused to grant Lim's request saying that the issue of qualification of Gonzalez for the position of Member of the House of Representatives is within the exclusive jurisdiction of the HRET, citing this Court's ruling in *Limkaichong v. Commission on Elections*[21]/[22].

Gonzalez contends that the COMELEC gravely abused its discretion in issuing the assailed resolutions insofar as -

1. It would install the Respondent Reno G. Lim as the Third District of Albay's Representative even though Lim never won the election, and who never became a legal party in the case;
 2. It would hold that the petitioner Gonzalez is not a Filipino citizen;
 3. It would go on to convene a "Special Board of Canvassers of Albay" created for the sole purpose of proclaiming the respondent Lim as the actual winner of the May 10 elections in the Third District of Albay;
- x x x the Commission's resolutions, insofar as it was:
4. Issued with such great speed and haste that its mistakes are glaring;
 5. Issued without the required (valid) certification;
 6. Insofar as it did not hold that the respondent Reno [G.] Lim had committed more than one act of forum-shopping.[23]

In his Comment,[24] the Solicitor General found no grave abuse of discretion committed by the COMELEC in issuing the assailed resolutions stating that the Commission correctly ruled that Gonzalez is not a natural-born citizen of the Philippines by his failure to perfect his election of Philippine citizenship in accordance with C.A. No. 625 and R.A. No. 562. He likewise adopted the position of the COMELEC that *Limkaichong* is not applicable to the present case and that the motion for reconsideration filed by Gonzalez was pro forma.

The petition presents the following issues for resolution: (1) whether the petition in SPA No. 10-074 (DC) was timely filed; (2) whether Gonzalez was validly proclaimed as the duly elected Representative of the 3rd District of Albay in the May 10, 2010 elections; and (3) whether the COMELEC had lost jurisdiction over the issue of Gonzalez's citizenship.

We find the petition meritorious.

A petition to cancel a candidate's COC may be filed under Section 78 of the OEC which 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 due notice and hearing, not later than fifteen days before the election. (Underlining supplied.)

A petition for disqualification of a candidate may also be filed pursuant to Section 68 of the same Code which states:

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, 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 permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

The prohibited acts covered by Section 68 refer to election campaign or political activity outside the campaign period (Section 80); removal, destruction or defacement of lawful election propaganda (Section 83); certain forms of election propaganda (Section 85); violation of rules and regulations on election propaganda through mass media; coercion of subordinates (Section 261 [d]); threats, intimidation, terrorism, use of fraudulent device or other forms of coercion (Section 261 [e]); unlawful electioneering (Section 261 [k]); release, disbursement or expenditure of public funds (Section 261 [v]); solicitation of votes or undertaking any propaganda on the day of the election (Section 261 [cc], sub-par.6).

As to the ground of false representation in the COC under Section 78, we held in *Salcedo II v. Commission on Elections*[25] that in order to justify the cancellation of COC, it is essential that the false representation mentioned therein pertain to a material matter for the sanction imposed by this provision would affect the substantive rights of a candidate - the right to run for the elective post for which he filed the certificate of candidacy. Although the law does not specify what would be considered as a "material representation", the Court concluded that this refers to qualifications for elective office. Citing previous cases in which the Court interpreted this phrase, we held that Section 78 contemplates statements regarding age,[26] residence[27] and citizenship or non-possession of natural-born Filipino status.[28] Furthermore, aside 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. In other words, it must be made with an intention to deceive the electorate as to one's qualification for public office.[29]

Significantly, we pointed out in *Salcedo II* the two remedies available for questioning the qualifications of a candidate, thus:

There are two instances where a petition questioning the qualifications of a registered candidate to run for the office for which his certificate of candidacy was filed can be raised under the Omnibus Election Code (B.P. Blg. 881), to wit:

"(1) Before election, pursuant to Section 78 thereof which provides that:

x x x

and

"(2) After election, pursuant to Section 253 thereof, viz:

`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."

(emphasis supplied)

The only difference between the two proceedings is that, under Section 78, the qualifications for elective office are misrepresented in the certificate of candidacy and the proceedings must be initiated before the elections, whereas a petition for quo warranto under Section 253 may be brought on the basis of two grounds - (1) ineligibility or (2) disloyalty to the Republic of the Philippines, and must be initiated within ten days after the proclamation of the election results. Under Section 253, a candidate is ineligible if he is disqualified to be elected to office, and he is disqualified if he lacks any of the qualifications for elective office.[30] (Emphasis supplied.)

Clearly, the only instance where a petition questioning the qualifications of a candidate for elective office can be filed before election is when the petition is filed under Section 78 of the OEC.

The petition in SPA No. 10-074 (DC) based on the allegation that Gonzalez was not a natural-born Filipino which was filed before the elections, is in the nature of a petition filed under Section 78. The recitals in the petition in said case, however, state that it was filed pursuant to Section 4 (b) of COMELEC Resolution No. 8696 and Section 68 of the OEC to disqualify a candidate for lack of qualifications or possessing some grounds for disqualification. The COMELEC treated the petition as one filed both for disqualification and cancellation of COC, with the effect that Section 68, in relation to Section 3, Rule 25 of the COMELEC Rules of Procedure, is applicable insofar as determining the period for filing the petition.

Rule 25 of the COMELEC Rules of Procedure on Disqualification of Candidates provides:

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.

x x x x

Sec. 3. Period to File Petition. -- The petition shall be filed any day after the last day for filing of certificates of candidacy but not later than the date of proclamation. (Emphasis supplied.)

On the other hand, the procedure for filing a petition for cancellation of COC is covered by Rule 23 of the COMELEC Rules of Procedure, which provides:

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 or 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 certificate of candidacy.

x x x x (Emphasis supplied.)

In *Loong v. Commission on Elections*,^[31] we categorically declared that the period for filing a petition for cancellation of COC based on false representation is covered by Rule 23 and not Rule 25 of the COMELEC Rules of Procedure. Further, we held that Section 3 of Rule 25 allowing the filing of a petition at any time after the last day for filing of COC's but not later than the date of proclamation, is merely a procedural rule that cannot supersede Section 78 of the OEC. We quote the following pertinent discussion in said case:

x x x Section 78 of the same Code states that in case a person filing a certificate of candidacy has committed false representation, a petition to cancel the certificate of the aforesaid person may be filed within twenty-five (25) days from the time the certificate was filed.

Clearly, SPA No. 90-006 was filed beyond the 25-day period prescribed by Section 78 of the Omnibus Election Code.

We do not agree with private respondent Ututalum's contention that the petition for disqualification, as in the case at bar, may be filed at any time after the last day for filing a certificate of candidacy but not later than the date of proclamation, applying Section 3, Rule 25 of the Comelec Rules of Procedure.

x x x x

The petition filed by private respondent Ututalum with the respondent Comelec to disqualify petitioner Loong on the ground that the latter made a false representation in his certificate of candidacy as to his age, clearly does not fall under the grounds of disqualification as provided for in Rule 25 but is expressly covered by Rule 23 of the Comelec Rules of Procedure governing petitions to cancel certificate of candidacy. Moreover, Section 3, Rule 25 which allows the filing of the petition at any time after the last day for the filing of certificates of candidacy but not later than the date of proclamation, is merely a procedural rule issued by respondent Commission which, although a constitutional body, has no legislative powers. Thus, it can not supersede Section 78 of the Omnibus Election Code which is a legislative enactment.

We also do not find merit in the contention of respondent Commission that in the light of the provisions of Section 6 and 7 of Rep. Act No. 6646, a petition to deny due course to or cancel a certificate of candidacy may be filed even beyond the 25-day period prescribed by Section 78 of the Code, as long as it is filed within a reasonable time from the discovery of the ineligibility.

Sections 6 and 7 of Rep. Act No. 6646 are here re-quoted:

"SEC. 6. Effect of Disqualification Case. - Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong."

"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."

It will be noted that nothing in Sections 6 or 7 modifies or alters the 25-day period prescribed by Section 78 of the Code for filing the appropriate action to cancel a certificate of candidacy on account of any false representation made therein. On the contrary, said Section 7 affirms and reiterates Section 78 of the Code.

We note that Section 6 refers only to the effects of a disqualification case which may be based on grounds other than that provided under Section 78 of the Code. But Section 7 of Rep. Act No. 6646 also makes the effects

referred to in Section 6 applicable to disqualification cases filed under Section 78 of the Code. Nowhere in Sections 6 and 7 of Rep. Act No. 6646 is mention made of the period within which these disqualification cases may be filed. This is because there are provisions in the Code which supply the periods within which a petition relating to disqualification of candidates must be filed, such as Section 78, already discussed, and Section 253 on petitions for quo warranto.

Thus, if a person qualified to file a petition to disqualify a certain candidate fails to file the petition within the 25-day period prescribed by Section 78 of the Code for whatever reasons, the election laws do not leave him completely helpless as he has another chance to raise the disqualification of the candidate by filing a petition for quo warranto within ten (10) days from the proclamation of the results of the election, as provided under Section 253 of the Code. x x x[32] (Additional emphasis supplied.)

COMELEC Resolution No. 8696 entitled "Rules on Disqualification Cases Filed in Connection with the May 10, 2010 Automated National and Local Elections" was promulgated on November 11, 2009. Section 4 thereof provides:

SEC. 4. Procedure in filing petitions. - For purposes of the preceding sections, the following procedure shall be observed:

A. PETITION TO DENY DUE COURSE TO OR CANCEL CERTIFICATE OF CANDIDACY

- A verified petition to deny due course or to cancel certificate of candidacy may be filed by any person within five (5) days from the last day for the filing of certificate of candidacy but not later than twenty-five (25) days from the filing of certificate of candidacy under Section 78 of the Omnibus Election Code (OEC);

x x x x

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

- 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

As can be gleaned, Section 4(B) of Resolution No. 8696 allowing a petition to disqualify a candidate based on his lack of qualifications for elective office such as age, residence and citizenship to be filed "on any day after the last day for filing of certificates of candidacy but not later than the date of proclamation" (the period provided in Section 68 of the OEC), instead of the period for filing under Section 78 (not later than twenty-five days from the filing of the certificate of candidacy) is similar to Rule 25 of the COMELEC Rules of Procedure. Following our ruling in *Loong v. Commission on Elections*,^[33] we find that Section 4(B) of Resolution No. 8696 represents another attempt to modify by a mere procedural rule the statutory period for filing a petition to cancel COC on the ground of false representation therein regarding a candidate's qualifications. Like Rule 25 of the COMELEC Rules of Procedure, Section 4(B) of Resolution No. 8696 would supplant the prescribed period of filing of petition under Section 78 with that provided in Section 68 even if the latter provision does not at all cover the false representation regarding age, residence and citizenship which may be raised in a petition under Section 78. Indeed, if the purpose behind this rule promulgated by the COMELEC - allowing a petition to cancel COC based on the candidate's non-compliance with constitutional and statutory requirements for elective office, such as citizenship, to be filed even beyond the period provided in Section 78 - was simply to remedy a perceived

"procedural gap" though not expressly stated in Resolution No. 8696, the Court had already rejected such justification. Thus, we declared in Loong:

It is true that the discovery of false representation as to material facts required to be stated in a certificate of candidacy, under Section 74 of the Code, may be made only after the lapse of the 25-day period prescribed by Section 78 of the Code, through no fault of the person who discovers such misrepresentations and who would want the disqualification of the candidate committing the misrepresentation. It would seem, therefore, that there could indeed be a gap between the time of the discovery of the misrepresentation, (when the discovery is made after the 25-day period under Sec. 78 of the Code has lapsed) and the time when the proclamation of the results of the election is made. During this so-called "gap" the would-be petitioner (who would seek the disqualification of the candidate) is left with nothing to do except to wait for the proclamation of the results, so that he could avail of a remedy against the misrepresenting candidate, that is, by filing a petition for quo warranto against him. Respondent Commission sees this "gap" in what it calls a procedural gap which, according to it, is unnecessary and should be remedied.

At the same time, it can not be denied that it is the purpose and intent of the legislative branch of the government to fix a definite time within which petitions or protests related to eligibility of candidates for elective offices must be filed, as seen in Sections 78 and 253 of the Code. Respondent Commission may have seen the need to remedy this so-called "procedural gap", but it is not for it to prescribe what the law does not provide, its function not being legislative. The question of whether the time to file these petitions or protests is too short or ineffective is one for the Legislature to decide and remedy.[34] (Emphasis supplied.)

In the more recent case of *Fermin v. Commission on Elections*,[35] we stressed that a petition filed under Section 78 must not be interchanged or confused with one filed under Section 68. A petition which is properly a "Section 78 petition" must therefore be filed within the period prescribed therein, and a procedural rule subsequently issued by COMELEC cannot supplant this statutory period under Section 78. We further distinguished the two petitions as to their nature, grounds and effects, to wit:

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 and statutory 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. Indeed, the Court has already likened a proceeding under Section 78 to a quo warranto proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, 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.

x x x x

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

x x x x

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, specifically Section 1 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 (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 x x x

x x x x

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. As aptly observed by the eminent constitutionalist, Supreme Court Justice Vicente V. Mendoza, in his separate opinion in *Romualdez-Marcos v. Commission on Elections*:

x x x x

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* and *Loong v. Commission on Elections* 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 of Republic Act (R.A.) No. 6646, 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 (retired Chief Justice Hilario G. Davide, Jr., in his dissenting opinion in *Aquino v. Commission on Elections* 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. In addition, it is noteworthy that *Loong*, 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 x x x.

x x x x

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.

x x x[36] (Additional emphasis supplied.)

Since the petition in SPA No. 10-074 (DC) sought to cancel the COC filed by Gonzalez and disqualify him as a candidate on the ground of false representation as to his citizenship, the same should have been filed within twenty-five days from the filing of the COC, pursuant to Section 78 of the OEC. Gonzales filed his COC on December 1, 2009. Clearly, the petition for disqualification and cancellation of COC filed by Lim on March 30, 2010 was filed out of time. The COMELEC therefore erred in giving due course to the petition.

Even assuming *arguendo* that the petition in SPA No. 10-074 (DC) was timely filed, we find that the COMELEC gravely erred when it held that the proclamation of Gonzalez by the PBOC of Albay on May 12, 2010 was premature and illegal.

Section 72 of the OEC, was amended by Section 6 of R.A. No. 6646 which reads:

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. (Emphasis supplied.)

In its July 23, 2010 Resolution, the COMELEC ruled that the motion for reconsideration of the Second Division's May 8, 2010 Resolution filed by Gonzalez on May 14, 2010 was pro forma and hence did not suspend the execution of the May 8, 2010 resolution disqualifying him as a candidate.

Section 7 of COMELEC Resolution No. 8696 provides:

SEC. 7. Motion for reconsideration. A motion to reconsider a Decision, Resolution, Order or Ruling of a Division shall be filed within three (3) days from the promulgation thereof. Such motion, if not pro-forma, suspends the execution or implementation of the Decision, Resolution, Order or Ruling.

Within twenty-four (24) hours from the filing thereof, the Clerk of the Commission shall notify the Presiding Commissioner. The latter shall within two (2) days thereafter, certify the case to the Commission en banc.

The Clerk of the Commission shall calendar the Motion for Reconsideration for the resolution of the Commission en banc within three (3) days from the certification thereof.

Section 13, Rule 18 of the COMELEC Rules of Procedure on the Finality of Decisions or Resolutions provides that -

(c) Unless a motion for reconsideration is seasonably filed, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days in Special actions and Special cases and after fifteen (15) days in all other actions or proceedings, following its promulgation.

Section 2, Rule 19 of the COMELEC Rules of Procedure also states:

SEC. 2. Period for Filing Motions for Reconsideration. -- A motion to reconsider a decision, resolution, order, or ruling of a Division shall be filed within five (5) days from the promulgation thereof. Such motion, if not pro forma, suspends the execution or implementation of the decision, resolution, order or ruling.

The Commission En Banc in its July 23, 2010 Resolution said:

As found by this Commission, the motion for reconsideration merely mentioned that respondent was already proclaimed as the winning candidate for Representative of the 3rd District of Albay. Nothing was, however,

averred nor any document was submitted to attest to the fact that that respondent has complied with all the legal requirements and procedure for the election of Philippine citizenship as laid down in Commonwealth Act No. 625 which specifically requires that the oath of allegiance should be filed with the nearest civil registry.[37]

We have held that mere reiteration of issues already passed upon by the court does not automatically make a motion for reconsideration pro forma. What is essential is compliance with the requisites of the Rules.[38] Indeed, in the cases where a motion for reconsideration was held to be pro forma, the motion was so held because (1) it was a second motion for reconsideration, or (2) it did not comply with the rule that the motion must specify the findings and conclusions alleged to be contrary to law or not supported by the evidence, or (3) it failed to substantiate the alleged errors, or (4) it merely alleged that the decision in question was contrary to law, or (5) the adverse party was not given notice thereof.[39]

In the case at bar, the motion for reconsideration[40] filed by Gonzalez failed to show that it suffers from the foregoing defects. Although the motion repeatedly stressed that the people of the Third District of Albay had spoken through the winning margin of votes for Gonzalez that they chose the latter to represent them in the House of Representatives, it also reiterated his position that the petition filed by Bichara is time-barred, adding that it was just an act of political harassment. But the main argument asserts that the evidence of petitioner Bichara was insufficient to justify the Second Division's ruling that Gonzalez is not a natural-born Filipino and hence disqualified to be a candidate for the position of Member of the House of Representatives. Verily, under prevailing jurisprudence, to successfully challenge herein Gonzalez's disqualification, petitioner in SPA No. 10-074 (DC) must clearly demonstrate that Gonzalez's ineligibility is so patently antagonistic to constitutional and legal principles that overriding such ineligibility and thereby giving effect to the apparent will of the people would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote.[41] The COMELEC thus seriously erred in ruling that Gonzalez's motion for reconsideration was pro forma.

Petitioner's motion for reconsideration of the May 8, 2010 resolution of the Second Division having been timely filed, the said resolution had not become final and executory. Considering that at the time of the proclamation of Gonzalez who garnered the highest number of votes for the position of Representative in the 3rd district of Albay, the said Division Resolution declaring Gonzalez disqualified as a candidate for the said position was not yet final, he had at that point in time remained qualified. Therefore, his proclamation on May 12, 2010 by the PBOC was valid or legal.[42] Moreover, the May 8, 2010 resolution cannot as yet be implemented for not having attained finality.

Despite recourse to this Court, however, we cannot rule on the issue of citizenship of Gonzalez. Subsequent events showed that Gonzalez had not only been duly proclaimed, he had also taken his oath of office and assumed office as Member of the House of Representatives. We have consistently held that once a winning candidate has been proclaimed, taken his oath, and assumed office as a member of the House of Representatives, COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins.[43] In *Perez v. Commission on Elections*,[44] we declared that the Court does not have jurisdiction to pass upon the eligibility of the private respondent who was already a Member of the House of Representatives at the time of filing of the petition for certiorari.[45]

Under Article VI, Section 17 of the 1987 Constitution, the HRET is the sole judge of all contests relating to the election, returns, and qualifications of the members of the House of Representatives. As this Court explained in *Lazatin v. House Electoral Tribunal*[46]:

The use of the word "sole" emphasizes the exclusive character of the jurisdiction conferred x x x. The exercise

of the power by the Electoral Commission under the 1935 Constitution has been described as "intended to be as complete and unimpaired as if it had remained originally in the legislature" x x x. Earlier, this grant of power to the legislature was characterized by Justice Malcolm "as full, clear and complete" x x x. Under the amended 1935 Constitution, the power was unqualifiedly reposed upon the Electoral Tribunal x x x and it remained as full, clear and complete as that previously granted the legislature and the Electoral Commission x x x. The same may be said with regard to the jurisdiction of the Electoral Tribunals under the 1987 Constitution.

Limkaichong v. Commission on Elections[47] recently reiterated this settled rule on the COMELEC's loss of jurisdiction over a petition questioning the qualifications of a candidate upon his election, proclamation and assumption of office. In said case, petitioner Limkaichong faced two disqualification cases alleging that she is not a natural-born Filipino because her parents were Chinese citizens at the time of her birth. The cases remained pending by the time the May 14, 2007 elections were held in which Limkaichong emerged as the winner with 65,708 votes or by a margin of 7,746 votes. Subsequently, another congressional candidate (Olivia Paras) who obtained the second highest number of votes filed a motion for leave to intervene and to suspend the proclamation of Limkaichong, which the COMELEC's Second Division granted. The day after the PBOC suspended her proclamation, the COMELEC issued Resolution No. 8062 adopting the policy-guidelines of not suspending the proclamation of winning candidates with pending disqualification cases which shall be without prejudice to the continuation of the hearing and resolution of the cases. Accordingly, Limkaichong moved to reconsider the resolution disqualifying her as a candidate and to lift the order suspending her proclamation. In compliance with Resolution No. 8062, the PBOC reconvened and proclaimed Limkaichong as the duly elected Member of the House of Representatives for the 1st district of Negros Oriental. Thereafter, Paras filed a petition to annul Limkaichong's proclamation, which was dismissed by the COMELEC's First Division, upon the ground that the disqualification cases were not yet final when Limkaichong was proclaimed. Her proclamation being valid or legal, the COMELEC ruled that it effectively divested the Commission of jurisdiction over the cases.

Limkaichong then moved to declare the disqualification cases as dismissed, contending that with her proclamation, her having taken her oath of office and her assumption of the position, the COMELEC was divested of jurisdiction to hear the disqualification cases. Since the COMELEC did not resolve her motion despite her repeated pleas, Limkaichong filed a petition for certiorari before this Court. Said petition was consolidated with the petition for prohibition and injunction filed by Louis C. Biraogo, petition for certiorari and injunction filed by Renald F. Villando and the petition for quo warranto, prohibition and mandamus with prayer for temporary restraining order and preliminary injunction instituted by Paras.

By Decision dated April 1, 2009, this Court upheld the validity of Limkaichong's proclamation and the HRET's jurisdiction over the issue of disqualification of Limkaichong, as follows:

The Court has held in the case of *Planas v. COMELEC*, that at the time of the proclamation of Defensor, the respondent therein who garnered the highest number of votes, the Division Resolution invalidating his certificate of candidacy was not yet final. As such, his proclamation was valid or legal, as he had at that point in time remained qualified. Limkaichong's situation is no different from that of Defensor, the former having been disqualified by a Division Resolution on the basis of her not being a natural-born Filipino citizen. When she was proclaimed by the PBOC, she was the winner during the elections for obtaining the highest number of votes, and at that time, the Division Resolution disqualifying her has not yet become final as a result of the motion for reconsideration.

x x x x

In her petition x x x, Limkaichong argued that her proclamation on May 25, 2007 by the PBOC divested the COMELEC of its jurisdiction over all issues relating to her qualifications, and that jurisdiction now lies with

the HRET.

Biraogo, on the other hand, believed otherwise. He argued x x x that the issue concerning Limkaichong's disqualification is still within the exclusive jurisdiction of the COMELEC En Banc to resolve because when Limkaichong was proclaimed on May 25, 2007, the matter was still pending resolution before the COMELEC En Banc.

We do not agree. The Court has invariably held that once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins. It follows then that the proclamation of a winning candidate divests the COMELEC of its jurisdiction over matters pending before it at the time of the proclamation. The party questioning his qualification should now present his case in a proper proceeding before the HRET, the constitutionally mandated tribunal to hear and decide a case involving a Member of the House of Representatives with respect to the latter's election, returns and qualifications. The use of the word "sole" in Section 17, Article VI of the Constitution and in Section 250 of the OEC underscores the exclusivity of the Electoral Tribunals' jurisdiction over election contests relating to its members.

x x x x[48] (Additional emphasis supplied.)

Maintaining that it retains jurisdiction over SPA No. 10-074 (DC), the COMELEC En Banc declared in its July 23, 2010 Resolution that the ruling in *Limkaichong v. Commission on Elections* does not apply to the case of *Gonzalez* since this Court found Limkaichong's proclamation to be valid pursuant to COMELEC Resolution No. 8062 which adopted the policy guideline, in connection with the May 14, 2007 elections, of not suspending the proclamation of winning candidates with pending disqualification cases which shall be without prejudice to the continuation of the hearing and decision of the involved cases.

In the case of *Gonzalez*, the COMELEC said that the applicable rule is Section 16 of COMELEC Resolution No. 8678 promulgated on October 6, 2009 which specifically governs the proceedings for the May 10, 2010 Automated Elections. Said provision reads:

SEC. 16. Effects of Disqualification. -- Any candidate who has been declared disqualified by final judgment shall not be voted for and the votes cast in his favor shall not be counted. If, for any reason, he is not declared disqualified by final judgment before the election and he is voted for and receives the winning number of votes, the case shall continue and upon motion of the petitioner, complainant, or intervenor, the proclamation of such candidate may be ordered suspended during the pendency of the said case whenever the evidence is strong.

a) where a similar complaint/petition is filed before the election and before the proclamation of the respondent and the case is not resolved before the election, the trial and hearing of the case shall continue and referred to the Law Department for preliminary investigation.

b) where the complaint/petition is filed after the election and before the proclamation of the respondent, the trial and hearing of the case shall be suspended and referred to the Law Department for preliminary investigation.

In either case, if the evidence of guilt is strong, the Commission may order the suspension of the proclamation of respondent, and if proclaimed, to suspend the effects of proclamation. (Emphasis supplied.)

Invoking the last paragraph of the foregoing provision which the COMELEC said is in harmony with Section 6 of R.A. No. 6646 (Electoral Reforms Law of 1987), the COMELEC ruled that *Gonzalez's* proclamation was premature and illegal, thus:

Third, as found by the Supreme Court in *Limkaichong*, the COMELEC en banc on August 16, 2007 ruled on *Limkaichong's* manifestation and motion for clarification, thus:

"In view of the proclamation of *Limkaichong* and her subsequent assumption of office on June 30, 2007, this Commission rules that all pending incidents relating to the qualifications of *Limkaichong* should now be determined by the House of Representatives Electoral Tribunal in accordance with the above-quoted provision of the Constitution.

"xxx"

On the contrary, in the present case, the Second Division of the Commission, in the exercise of its power to suspend such proclamation under the aforequoted provisions of law, refused to set aside the proclamation and the effects thereof.

Clearly, therefore, there is no taint of doubt that with the Resolution of the Second Division disqualifying the respondent, his proclamation by the Provincial Board of Canvassers was pre-mature and illegal and should therefore be annulled. There is no question that this Commission has the power to suspend such proclamation. Notably, in several jurisprudence where the Supreme Court refused the annulment of proclamation and held that the jurisdiction pertained already to HRET, it was the Comelec itself that eventually allowed the proclamation and the effects thereof, as shown in [the] Decision of the Supreme Court above-referred to. In stark contrast with the case at bar, this Commission itself is exercising its prerogative and power to nullify an illegal and premature proclamation of the respondent on the basis of the continued proceedings pursuant to both Section 16 of Resolution 8678 and Section 6 of Republic Act 6646.

Lastly, it must be taken into consideration that, unlike in the previous elections, the ballots were now already printed with the names of the candidates as of the date of printing, and it was already impossible without incurring tremendous expense and delay merely to remove the name of the disqualified candidate and program the PCOS machines not to count the votes cast in favor of the disqualified candidate in a short period of time prior to the actual elections. For said reason, this Commission has ample power to suspend the effects of, and ultimately annul, the proclamation of the disqualified candidate whose votes should not have been counted in the first place.

x x x[49] (Emphasis supplied.)

We find the above ruling contrary to our pronouncement in *Limkaichong* and jurisprudence interpreting Section 72 of the OEC and Section 6 of R.A. No. 6646 which amended said provision.

First, as already stated, there was no legal bar to the proclamation of Gonzalez as the winning candidate on May 12, 2010 since the May 8, 2010 Resolution at that time had not yet become final; in fact Gonzalez received a copy thereof only on May 11, 2010. We have held that the five-day period for filing a motion for reconsideration under Rule 19, Section 2 of the COMELEC Rules of Procedure should be counted from the receipt of the decision, resolution, order, or ruling of the COMELEC Division.[50] With his filing of a motion for reconsideration within the three-day period provided in Section 7 of COMELEC Resolution No. 8696, the execution of the said resolution was effectively suspended.

Moreover, there is nothing in the May 8, 2010 Resolution of the Second Division ordering the suspension of the proclamation of Gonzalez. From the language of Section 6 of R.A. No. 6646 upon which the first paragraph of Section 16 of COMELEC Resolution No. 8678 was based, the Commission can order the suspension of the proclamation of the winning candidate only upon motion during the pendency of the disqualification case. The Court has ruled that the suspension of proclamation of a winning candidate is not a matter which the COMELEC Second Division can dispose of *motu proprio*. Section 6 of R.A. No. 6646 requires that the suspension must be

"upon motion by the complainant or any intervenor."[51]

The rule then is that 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. But those against whom no final judgment of disqualification had been rendered may be voted for and proclaimed, unless, on motion of the complainant, the COMELEC suspends their proclamation because the grounds for their disqualification or cancellation of their certificates of candidacy are strong.[52] There being no final judgment of disqualification yet at the time of his proclamation on May 12, 2010, it was grave error for the COMELEC En Banc to rule that Gonzalez's proclamation was illegal and premature. Also, the May 8, 2010 Resolution rendered by the Second Division cannot be construed as an implicit exercise by the Commission of its power to suspend the proclamation of Gonzalez as it could not have yet ordered such suspension considering that Bichara (petitioner in SPA No. 10-074 [DC]) filed his "Urgent Motion to Stop/Suspend The Proclamation of Fernando Vallejo Gonzalez" only on May 11, 2010 after the promulgation of the May 8, 2010 Resolution.[53] Moreover, the COMELEC En Banc did not act on said motion of Bichara even after Gonzalez had been proclaimed by the PBOC. Subsequently, Lim filed a motion for leave to intervene and suspend the effects of proclamation of Gonzalez, which was followed by ten very urgent motions for the COMELEC En Banc to resolve the same.[54]

Neither can the COMELEC anchor its ruling that the May 12, 2010 proclamation of Gonzalez was illegal and premature on the ground that votes for said candidate, who was disqualified under the May 8, 2010 Resolution of the Second Division, should not have been counted. This is apparent from the other reason cited by the COMELEC as one of the circumstances distinguishing the present case from that of Limkaichong, thus:

Lastly, it must be taken into consideration that, unlike the previous elections, the ballots were now already printed with the names of the candidates as of the date of printing, and it was already impossible without incurring tremendous expense and delay merely to remove the name of the disqualified candidate and program the PCOS machines not to count the votes cast in favor of the disqualified candidate in a short period of time prior to the actual elections. For said reason, this Commission has ample power to suspend the effects of, and ultimately annul, the proclamation of the disqualified candidate whose votes should not have been counted in the first place.[55] (Emphasis supplied.)

The above proposition is untenable. The advent of automated elections did not make any difference in the application of Section 6 of R.A. No. 6646 insofar as the effects of disqualification are concerned. Even at the time when ballots were physically read by the board of election inspectors and counted manually, it had not been absolutely necessary to reprint the ballots or remove the names of candidates who were disqualified before election. The votes cast for such candidates considered as "stray votes" even if read by the PCOS machines will have to be disregarded by the board of canvassers upon proper order from the COMELEC.

In any case, the point raised by the COMELEC is irrelevant in resolving the present controversy. It has long been settled that pursuant to Section 6 of R.A. No. 6646, a final judgment before the election is required for the votes of a disqualified candidate to be considered "stray." In the absence of any final judgment of disqualification against Gonzalez, the votes cast in his favor cannot be considered stray.[56] After proclamation, taking of oath and assumption of office by Gonzalez, jurisdiction over the matter of his qualifications, as well as questions regarding the conduct of election and contested returns - were transferred to the HRET as the constitutional body created to pass upon the same. The Court thus does not concur with the COMELEC's flawed assertion of jurisdiction premised on its power to suspend the effects of proclamation in cases involving disqualification of candidates based on commission of prohibited acts and election offenses. As we held in Limkaichong, any allegations as to the invalidity of the proclamation will not prevent the HRET from assuming jurisdiction over all matters essential to a member's qualification to sit in the House of Representatives.[57]

It must be noted that sub-paragraphs (a) and (b), Section 16 of COMELEC Resolution No. 8678 which contemplate disqualification cases against candidates over which the COMELEC retains jurisdiction even after those candidates have won the elections, duly proclaimed and assumed office, cannot be applied to petitions filed against candidates for the position of Member of the House of Representatives questioning their constitutional and statutory qualifications for the office under Section 78 of the OEC. The law is explicit in vesting jurisdiction over such cases in the HRET. In our Resolution dated July 20, 2009 denying the motion for reconsideration with prayer for oral argument filed by Biraogo in the Limkaichong case, we affirmed our ruling in our Decision of April 1, 2009 that "the proper remedy of those who may assail Limkaichong's disqualification based on citizenship is to file before the HRET the proper petition at any time during incumbency." That Lim had already withdrawn the petition for quo warranto he had earlier filed before the HRET is of no consequence, considering that citizenship is a continuing requirement for the holding of office of Members of the House of Representatives.

Under the 1987 Constitution, Members of the House of Representatives must be natural-born citizens not only at the time of their election but during their entire tenure. Anyone who assails a Representative's citizenship or lack of it may still question the same at any time, even beyond the ten-day prescriptive period set in the 1998 HRET Rules.[58]

We also hold that there is no basis for the COMELEC's order constituting a Special Provincial Board of Canvassers for the purpose of proclaiming Lim who got the next highest number of votes in the May 10, 2010 elections for the position of Representative of the 3rd District of Albay. It is well-settled that the ineligibility of a candidate receiving majority votes does not entitle the eligible candidate receiving the next highest number of votes to be declared elected. A minority or defeated candidate cannot be deemed elected to the office. The votes intended for the disqualified candidate should not be considered null and void, as it would amount to disenfranchising the electorate in whom sovereignty resides.[59] The second placer is just that, a second placer - he lost in the elections and was repudiated by either the majority or plurality of voters.[60]

Private respondent Lim argues that the second placer rule will not apply in this case because Gonzalez was disqualified to be a candidate before election under the assailed COMELEC resolutions which became final and executory after five (5) days without a restraining order issued by this Court. The effect of the ruling on Gonzalez's disqualification retroacts to the day of election (May 10, 2010). As reflected in the recent Statement of Votes prepared by the Special Board of Canvassers, the name of Fernando V. Gonzalez has been delisted from the lists of official candidates for the Members of the House of Representatives in the 3rd District of Albay.[61]

The exception to the second placer rule is predicated on the concurrence of the following: (1) the one who obtained the highest number of votes is disqualified; and (2) the electorate is fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety but would nonetheless cast their votes in favor of the ineligible candidate.[62] These facts warranting the exception to the rule are not present in the case at bar. As noted by Commissioner Velasco, the date of promulgation of the resolution declaring Gonzalez disqualified to be a candidate in the May 10, 2010 was not a previously fixed date as required by Section 6[63] of COMELEC Resolution No. 8696 as the records do not show that the parties were given prior notice thereof. In fact, Gonzalez through his counsel received a copy of the May 8, 2010 Resolution only on May 11, 2010, one day after the elections.

And as we held in *Bautista v. Commission on Elections*[64]

Thus, when the electorate voted for Bautista as Punong Barangay on 15 July 2002, it was under the belief that he was qualified. There is no presumption that the electorate agreed to the invalidation of their votes as stray votes in case of Bautista's disqualification. The Court cannot adhere to the theory of respondent Alcoreza that the votes cast in favor of Bautista are stray votes. A subsequent finding by the COMELEC en banc that

Bautista is ineligible cannot retroact to the date of elections so as to invalidate the votes cast for him. As held in *Domino v. COMELEC*:

Contrary to the claim of INTERVENOR, petitioner was not notoriously known by the public as an ineligible candidate. Although the resolution declaring him ineligible as candidate was rendered before the election, however, the same is not yet final and executory. In fact, it was no less than the COMELEC in its Supplemental Omnibus Resolution No. 3046 that allowed DOMINO to be voted for the office and ordered that the votes cast for him be counted as the Resolution declaring him ineligible has not yet attained finality. Thus the votes cast for DOMINO are presumed to have been cast in the sincere belief that he was a qualified candidate, without any intention to misapply their franchise. Thus, said votes can not be treated as stray, void, or meaningless.[65] (Emphasis supplied.)

We have declared that not even this Court has authority under any law to impose upon and compel the people to accept a loser, as their representative or political leader.[66] The wreath of victory cannot be transferred from the disqualified winner to the repudiated loser.[67] The COMELEC clearly acted with grave abuse of discretion in ordering the proclamation of private respondent Lim who lost by a wide margin of 29,292 votes, after declaring Gonzalez, the winning candidate, disqualified to run as Member of the House of Representatives.

WHEREFORE, the petition is GRANTED. The assailed Resolution of the Second Division dated May 8, 2010 and COMELEC En Banc Resolution dated July 23, 2010 in SPA No. 10-074 (DC) are hereby ANNULLED and SET ASIDE. The Petition for Disqualification and Cancellation of Certificate of Candidacy of Fernando V. Gonzalez is DISMISSED, without prejudice to the filing of a proper petition before the House of Representatives Electoral Tribunal raising the same question on the citizenship qualification of Fernando V. Gonzalez.

No costs.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Velasco, Jr., Leonardo-De Castro, Peralta, Bersamin, Del Castillo, Abad, Perez, Mendoza, and Sereno, JJ., concur.
Nachura and Brion, JJ., on official leave.

[1] Rollo, pp. 110-114. Penned by Presiding Commissioner Nicodemo T. Ferrer and concurred in by Commissioners Lucenito N. Tagle and Elias R. Yusoph.

[2] *Id.* at 72-82. Penned by Commissioner Nicodemo T. Ferrer and concurred in by Commissioners Lucenito N. Tagle, Elias R. Yusoph and Gregorio Y. Larrazabal.

[3] *Id.* at 159-172.

[4] *Id.* at 184-198.

[5] *Id.* at 114.

[6] *Id.* at 111-113.

[7] *Id.* at 115.

[8] *Id.* at 509-513.

[9] *Id.* at 507-508.

[10] *Id.* at 488-506.

- [11] Id. at 138-142.
- [12] Id. at 319-323.
- [13] Id. at 115-137.
- [14] Id. at 407-412.
- [15] The Electoral Reforms Law of 1987.
- [16] Id. at 81-82.
- [17] Id. at 83-86.
- [18] Id. at 87-89.
- [19] Id. at 639-649.
- [20] Id. at 863-865.
- [21] G.R. Nos. 178831-32, 179120, 179132-33 & 179240-41, April 1, 2009, 583 SCRA 1.
- [22] Rollo, pp. 866-868.
- [23] Id. at 29.
- [24] Id. at 926-955.
- [25] G.R. No. 135886, August 16, 1999, 312 SCRA 447, 455.
- [26] Id. at 458, citing *Loong v. Commission on Elections*, G.R. No. 93986, December 22, 1992, 216 SCRA 760.
- [27] Id. at 455, citing *Abella v. Larrazabal*, G.R. Nos. 87721-30 & 88004, December 21, 1989, 180 SCRA 509 and *Aquino v. Commission on Elections*, G.R. No. 120265, September 18, 1995, 248 SCRA 400.
- [28] Id. at 455-456, citing *Labo, Jr. v. Commission on Elections*, G.R. Nos. 105111 & 105384, July 3, 1992, 211 SCRA 297 and *Frivaldo v. Commission on Elections*, G.R. Nos. 120295 & 123755, June 28, 1996, 257 SCRA 727, G.R. No. 87193, June 23, 1989, 174 SCRA 245 and *Republic v. De la Rosa*, G.R. Nos. 104654, 105715 & 105735, June 6, 1994, 232 SCRA 785.
- [29] Id. at 459, citing *Romualdez-Marcos v. Commission on Elections*, G.R. No. 119976, September 18, 1995, 248 SCRA 300, 326.
- [30] Id. at 456-457.
- [31] *Supra* note 26.
- [32] Id. at 765-768.
- [33] *Supra* note 26.
- [34] Id. at 768-769.
- [35] G.R. Nos. 179695 & 182369, December 18, 2008, 574 SCRA 782.
- [36] Id. at 792-794, 796-798 and 800-803.
- [37] Rollo, p. 74.

- [38] Republic v. Asuncion, G.R. No. 159695, September 15, 2006, 502 SCRA 140, 147-148, citing Marina Properties Corporation v. Court of Appeals, 355 Phil. 705, 716 (1998).
- [39] Coquilla v. Commission on Elections, G.R. No. 151914, July 31, 2002, 385 SCRA 607, 614.
- [40] Rollo, pp. 115-137.
- [41] See Japzon v. Commission on Elections, G.R. No. 180088, January 19, 2009, 576 SCRA 331, 353.
- [42] See Planas v. Commission on Elections, G.R. No. 167594, March 10, 2006, 484 SCRA 529, 537.
- [43] Guerrero v. Commission on Elections, G.R. No. 137004, July 26, 2000, 336 SCRA 458, 466-467, citing Aquino v. Commission on Elections, supra note 27 at 417-418 and Romualdez-Marcos v. Commission on Elections, supra note 29 at 340-341. See also Dimaporo v. Commission on Elections, G.R. No. 179285, February 11, 2008, 544 SCRA 381, 392.
- [44] 375 Phil. 1106 (1999).
- [45] Id. at 1115.
- [46] No. L-84297, December 8, 1988, 168 SCRA 391, 401.
- [47] Supra note 21.
- [48] Id. at 32-34.
- [49] Rollo, pp. 79-80.
- [50] Coquilla v. Commission on Elections, supra note 39 at 612, citing Bulaong v. COMELEC, First Division, G.R. No. 107987, March 31, 1993, 220 SCRA 745.
- [51] Codilla, Sr. v. De Venecia, G.R. No. 150605, December 10, 2002, 393 SCRA 639, 663.
- [52] Coquilla v. Commission on Elections, supra note 39 at 615.
- [53] Rollo, pp. 278-280.
- [54] Id. at 373-487.
- [55] Id. at 80.
- [56] Quizon v. Commission on Elections, G.R. No. 177927, February 15, 2008, 545 SCRA 635, 642, citing Codilla, Sr. v. De Venecia, supra note 51 at 672.
- [57] Limkaichong v. Commission on Elections, supra note 21 at 36.
- [58] Id. at 38.
- [59] Albaña v. Commission on Elections, G.R. No. 163302, July 23, 2004, 435 SCRA 98, 109, citing Labo, Jr. v. Commission on Elections, supra note 28 at 311; Sunga v. Commission on Elections, G.R. No. 125629, March 25, 1998, 288 SCRA 76. See also Labo, Jr. v. Commission on Elections, G.R. No. 86564, August 1, 1989, 176 SCRA 1; Abella v. COMELEC, G.R. Nos. 100710 & 100739, September 3, 1991, 201 SCRA 253; Benito v. COMELEC, G.R. No. 106053, August 17, 1994, 235 SCRA 436; and Domino v. Commission on Elections, G.R. No. 134015, July 19, 1999, 310 SCRA 546.
- [60] Quizon v. Commission on Elections, supra note 56 at 643, citing Ocampo v. House of Representatives Electoral Tribunal, G.R. No. 158466, June 15, 2004, 432 SCRA 144, 150.

[61] Rollo, p. 858.

[62] Grego v. Commission on Elections, G.R. No. 125955, June 19, 1997, 274 SCRA 481, 501, citing Labo, Jr. v. Commission on Elections, *supra* note 28.

[63] SEC. 6. Promulgation. -- The promulgation of a Decision or Resolution of the Commission or a Division shall be made on a date previously fixed, notice of which shall be served in advance upon the parties or their attorneys personally, or by registered mail, telegram, fax or thru the fastest means of communication.

[64] G.R. Nos. 154796-97, October 23, 2003, 414 SCRA 299.

[65] *Id.* at 324-325.

[66] Miranda v. Abaya, G.R. No. 136351, July 28, 1999, 311 SCRA 617, 635.

[67] Domino v. Commission on Elections, *supra* note 59 at 574.

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