ALFAIS T. MUNDER, PETITIONER, VS. COMMISSION ON ELECTIONS AND ATTY. TAGO R. SARIP, RESPONDENTS.

G.R. No. 194076. October 19, 2011

Ponente: SERENO, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-194076/

SERENO, J.:

Jurisprudence has clearly established the doctrine that a petition for disqualification and a petition to deny due course to or to cancel a certificate of candidacy, are two distinct remedies to prevent a candidate from entering an electoral race. Both remedies prescribe distinct periods to file the corresponding petition, on which the jurisdiction of the Commission on Elections (Comelec) over the case is dependent. The present case, assailing a resolution of the Comelec En Banc, is not an exception. It must follow the rule set by law and jurisprudential doctrine.

The consolidated cases before us stem from a controversy resolved by the Comelec En Banc in SPA No. 10-086(DC) in its Resolution* promulgated on 04 October 2010.[1] The Comelec En Banc reversed the earlier Resolution[2] of the Comelec Second Division and disqualified petitioner Alfais T. Munder (Munder) from holding office as Mayor of Bubong, Lanao del Sur.

The Antecedents

In the last national election, which included the election of local elective officials, petitioner Munder ran as mayor of Bubong, Lanao del Sur, and filed his certificate of candidacy (CoC) on 26 November 2009. The last day for filing the certificate of candidacy was on 30 November 2009.[3] Under Sec. 4(A)(1) of Comelec Resolution 8696, a petition to deny due course or to cancel a certificate of candidacy must be filed within five days from the last day of the filing of the certificate of candidacy but not later than twenty-five days from the filing thereof.[4] Respondent Atty. Tago Sarip ("Sarip") likewise filed a certificate of candidacy and vied for the same position in the same municipality.

On 13 April 2010, Sarip filed a Petition for Disqualification[5] with the Comelec on the ground that Munder was not a registered voter of Bubong, Lanao del Sur, and that the latter's application for candidacy was not accomplished in full.

Sarip corroborated his allegation that Munder was not a registered voter by presenting a Certification from Amerah M. Hadji Sarip - Election Officer of Bubong, Lanao del Sur - that, in the election list, there was no "Alfais T. Munder" born on 7 May 1987.[6] He also presented a copy of a Voter Certification of one "Munder, Alfais Tocalo", residing at Rogero, Bubong, Lanao del Sur, whose date of birth was "05/07/1984", and who was registered as a voter on "7/26/2003". The said person was 18 years old at that time.[7] On the other hand, petitioner Munder's CoC for Mayor contained the name of a candidate as "Munder, Alfais Tocalo", 22 years old, with residence at Barangay Montia-an, Bubong, Lanao del Sur, and whose date of birth was "05-07-1987".[8]

Capitalizing on the seeming inconsistencies, Sarip argued that the candidate Munder was different from the registered voter Munder, since they had different birth years. Consequently, according to Sarip, Munder did not

possess the qualification to run as elective official and should be disqualified. Sarip also maintained that Munder had committed dishonesty and falsity in stating that the latter was a registered voter of Bubong, Lanao del Sur. Sarip filed his Petition for Disqualification pursuant to Resolution No. 8696, Section 4 (B) 1 and argued that he had timely filed the petition. Munder, on the other hand, countered that he was a registered voter of Precinct No. 0033, Barangay Rogero, Municipality of Bubong, Lanao del Sur.[9]

In the 10 May 2010 elections, Munder won overwhelmingly. Garnering 4,793 votes, he had more than twice the number obtained by Sarip, who came in second with 2,356 votes. The Municipal Board of Canvassers of Bubong, Lanao del Sur, thus proclaimed Munder as mayor on 15 May 2010. He filed his answer on 22 May 2010.

In his Answer with Affirmative Defenses,[10] Munder denied committing any misrepresentation in his CoC. He also argued that false representations, dishonesty and mockery of justice were not grounds for disqualification of a candidate under Comelec Resolution No. 8696. In effect, he argued that Sarip had availed himself of the wrong remedy and that the latter's petition should be treated as a Petition to Deny Due Course to or to Cancel Certificate of Candidacy. At the time Sarip filed his petition, the said period had already lapsed. Munder thus prayed for the dismissal of the former's petition against him.

On 29 June 2010, the Comelec Second Division sustained Munder's arguments and dismissed Sarip's Petition. It agreed with Munder that the grounds invoked by Sarip were not proper for a petition for disqualification, and that the latter's petition was actually seeking the purging of Munder's CoC. It partly held:

> ...[I]t appears that the nucleus of petitioner's cause of action to sustain his petition are the misrepresentations (respondent not being a registered voter of Municipality of Bubong, Lanao del Sur and the respondent was still a minor when he registered as a voter of the said municipality) allegedly perpetrated by the respondent, and the failure of the respondent to accomplish the formalities of his COC (the respondent's failure to indicate his precinct and to affix his thumbprint therein). We view all these disputations raised by the petitioner inappropriate for the petition for disqualification. These are not grounds for the petition for disqualification contemplated by the rules. In quintessence (sic) of the action taken the petitioner is actually seeking the denial or cancellation of the respondent's COC invoking false material representation of the respondent's qualification(s). However, the filing of a petition under this remedy has a prescriptive period which must be strictly followed. Under the rules, 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. Pursuant to the above rule, the petitioner has twenty-five (25) days after the filing the assailed COC or until December 21, 2009 to file the petition. Since the instant petition was filed only on March 13, 2010 or one hundred-seven (107) days beyond the reglementary period to file a petition to deny due course or to cancel the respondent's COC, the petitioner miserably failed to file his petition within the prescribed period. A petition to deny due course or to cancel a certificate of candidacy filed beyond the required period is filed out of time and may be not entertained. An attempt to circumvent the rules on prescription of period to file a petition to deny due course or to cancel COC in disguise of a petition for qualification will not be countenanced in this jurisdiction.
>
> Anent the contention of the petitioner vis-a-vis the failure of the respondent to comply with the formalities of the COC, the law governing the contents of the COC is Section 74 of the Omnibus Election Code. The alleged defect on the COC of the respondent, which is, failure to indicate therein his precinct and his failure to affix his thumbprint are not among those mandatory requirements enumerated under the aforementioned law. Hence, those assailed flaw in the formalities of the respondent's COC does not warrant the invalidation of the same. At most, it can only be considered as a minor inadvertence on the part of the respondent which does not necessarily nullify his COC. It has been held that when the law does not provide otherwise, a departure from the requirements of law which has been due to honest mistake or misinterpretation of the law on the part of

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

> him who is obligated to observe it and such departure has not been used as a means for fraudulent practices, will he held directory and such departure will be considered a harmless irregularity."[11] (Emphases supplied)

The outcome was, however, different when the Comelec En Banc, upon Sarip's Motion for Reconsideration,[12] reversed the ruling of the Second Division and disqualified Munder in its 4 October 2010 Resolution. The Comelec ruled directly on the substantive merit of the case, and not on the propriety of the remedy taken by Sarip. It thus ruled on the question of the continuing possession by Munder of one of the qualifications of the office of the Mayor - being a registered voter of the municipality where he runs as a candidate.

The Comelec En Banc decided the case on a single issue - whether the person described in the CoC and in the Certificate of Live Birth referred to the same person in the Voter's Certification, petitioner Alfais Tocalo Munder. The Comelec En Banc ruled on this factual issue, stating that the said persons were not one and the same, as they had different birth years. The Comelec held thus:

> ...It is difficult to reconcile that the ALFAIS TOCALO MUNDER who filed his COC, showing his intent to run as municipal mayor of Bubong, Lanao del Sur is one and the same person as that of ALFAIS TOCALO MUNDER who registered as voter of Barangay Rogero, Bubong, Lanao del Sur when records show that the ALFAIS TOCALO MUNDER who filed his COC indicated his date of birth as MAY 7, 1987 (as supported by the Certificate of Live Birth issued by the NSO) while the ALFAIS TOCALO MUNDER who registered as voter of Barangay Rogero, Bubong, Lanao del Sur indicated his date of birth as MAY 7, 1984. No person can be born twice.[13]

The Comelec also disregarded the fact that Munder had already been proclaimed as mayor of Bubong, Lanao del Sur. Consequently, it ruled against him and proceeded to declare him disqualified to hold the office of the mayor, for which he had been elected. The Comelec En Banc held:

> The Supreme Court has time and again ruled that qualifications for an elective office are continuing requirements and once any of them is lost, title to the office is forfeited. Munder lacking the requisite qualification of being a registered voter, should be removed from office.[14]

It ordered Munder to vacate the Office of the Mayor, and the elected vice-mayor to assume the position of mayor. It further directed the Department of Interior and Local Government and the Philippine National Police (PNP) to implement the Resolution against Munder. From this Resolution originated the two petitions filed by the two rivals for the mayoral position.

At the instance of Munder, we issued on 18 January 2011, a Temporary Restraining Order against the Comelec, DILG and PNP from implementing the 4 October 2010 Resolution of the Comelec removing Munder from the office.[15] The impending execution of the Comelec's Resolution created divisiveness and disorder in the municipality of Bubong such that even the military attested that they were on "red alert" due to the volatile political situation in the area brought about by the possible ouster of Munder. The Vice Mayor also prematurely assumed the office of the mayor and allegedly withdrew the Internal Revenue Allocation without a resolution from the Sangguniang Bayan. This aggravated the tension that had already been created by the election dispute between the petitioners of these consolidated petitions. The Court, thus, deemed a TRO justified to prevent disorder and bloodshed in Bubong.

In his petition, Munder argues that the Comelec acted without or in excess of its jurisdiction in taking cognizance of Sarip's petition which was filed beyond the reglementary period provided by law. Munder claims that Sarip should have instead filed a petition for quo warranto after the former's proclamation as the winning candidate. Munder likewise asserts that the Comelec committed grave abuse of discretion in effectively ruling upon his right to vote, when it attacked his status as a registered voter, in order to disqualify him from the mayoralty office.

Sarip, on the other hand, argues that the Comelec En Banc also acted with grave abuse of discretion in not declaring him entitled to assume the office of the municipal mayor of Bubong, Lanao del Sur after the disqualification of respondent Munder.

Public respondent Comelec, through the Office of the Solicitor General, chose to file its Comment only with respect to G.R. No. 194160, Sarip's Petition. It reiterated the legal doctrine that the second placer cannot be declared a winner in case the candidate who obtained the highest number of votes is disqualified. The OSG opposed Sarip's prayer that he, instead of the Vice-Mayor, be installed as Mayor of Bubong, Lanao del Sur.

The Issues

> (1) May a petition filed as a Petition for Disqualification properly invoke, as a ground, that the candidate sought to be disqualified was not a registered voter and thus not be barred by the earlier prescriptive period applicable to Petition to Deny Due Course to or to Cancel Certificate of Candidacy?
>
> (2) Did the Comelec commit grave abuse of discretion in concluding that the Alfais Munder in the voters' list is not the same as Alfais Munder the candidate?
>
> (3) Does Sarip have the right to be installed as Mayor of Bubong, Lanao del Sur for having placed second in the electoral contest therefor?

The Court's Ruling

The Comelec has the constitutional mandate to "enforce and administer all laws and regulations relative to the conduct of an election."[16]It has the power to create its own rules and regulations, a power it exercised on 11 November 2009 in promulgating Resolution No. 8696, or the "Rules on Disqualification of Cases filed in Connection with the May 10, 2010 Automated National and Local Elections." Section 4 thereof provides for the procedure to be followed in filing the following petitions: 1) Petition to Deny Due Course to or Cancel Certificate of Candidacy; 2) Petition to Declare a Nuisance Candidate, and 3) petition to disqualify a candidate pursuant to Section 68 of the Election Code and petition to disqualify for lack of qualifications or for possessing some grounds for disqualification.

Resolution No. 8696 provides for the venue for the filing of the petitions and the period within which they should be filed. The validity of the said Resolution has been recognized by this Court in the fairly recent case of Amora v. Comelec.[17]

Munder alleges that Sarip's petition with the Comelec should be considered as one to deny due course to or to cancel a CoC, and not for disqualification. One of the important differences between the two petitions is their prescriptive periods. For a Petition to Deny Due Course or to Cancel a Certificate of Candidacy, the period to file is within five days from the last day of the filing of the certificate of candidacy, but not later than 25 days from the filing thereof. On the other hand, a petition to disqualify a candidate may be filed at any day after the last day of filing of the certificate of candidacy, but not later than the date of proclamation.

It has been argued by Munder, who was earlier sustained by the Comelec Second Division, that the petition for disqualification should be treated as a petition to deny due course to or to cancel a certificate of candidacy, which had already prescribed.

We agree with Munder as to the nature of the petition filed by Sarip. The main ground of the said petition is that Munder committed dishonesty in declaring that he was a registered voter of Barangay Rogero, Bubong, Lanao del Sur, when in fact he was not. This ground is appropriate for a Petition to Deny Due Course or to Cancel Certificate of Candidacy.

Amora v. Comelec is applicable to the present controversy. In that case, similar to the present one, a mayoralty candidate was disqualified by the Comelec pursuant to a Petition for Disqualification. The petition was filed by one of the candidates for councilor in the same municipality, on the ground that the CoC had not been properly sworn to. Amora won in the election, but was disqualified by the Comelec after he was proclaimed as mayor of Candijay, Bohol. One of the issues clarified in the said case was the distinction between a Petition for Disqualification and a Petition to Deny Due Course or to Cancel Certificate of Candidacy. The Court, in effect, held that the Comelec should have dismissed the petition outright, since it was premised on a wrong ground. A Petition for Disqualification has specific grounds different from those of a Petition to Deny Due Course to or to Cancel Certificate of Candidacy. The latter is anchored on the false representation by a candidate as to material information in the CoC.[18]

For a petition for disqualification, the law expressly enumerates the grounds in Section 68 of Batas Pambansa Blg. 881 as amended, and which was replicated in Section 4(b) of Comelec Resolution No. 8696. The grounds stated by respondent in his Petition for Disqualification - that Munder was not qualified to run for not being a registered voter therein - was not included in the enumeration of the grounds for disqualification. The grounds in Section 68 may be categorized into two. First, those comprising "prohibited" acts of candidates; and second, the fact of their permanent residency in another country when that fact affects the residency requirement of a candidate according to the law.

In the earlier case of Fermin v. Comelec[19], the Court clarified the two remedies that may be availed of by a candidate to prevent another from running in an electoral race. The Court held:

> The ground raised in the Dilangalen petition is that Fermin allegedly lacked one of the qualifications to be elected as mayor of Northern Kabuntalan, i.e., he had not established residence in the said locality for at least one year immediately preceding the election. Failure to meet the one-year residency requirement for the public office is not a ground for the "disqualification" of a candidate under Section 68. The provision only refers to the commission of prohibited acts and the possession of a permanent resident status in a foreign country as grounds for disqualification....
>
> . . .
>
> To emphasize, a petition for disqualification, on the one hand, can be premised on Section 12 or 68 of the [Omnibus Election Code], or Section 40 of the [Local Government Code]. 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.[20]

In Fermin, the Court has debunked the interpretation that a petition for disqualification covers the absence of the substantive qualifications of a candidate (with the exception of the existence of the fact of the candidate's permanent residency abroad). It has, in effect, even struck down a Comelec Resolution - Resolution No. 7800, which enumerated the grounds for a petition for disqualification to include the non-registration of a candidate as voter in the locality where he or she is running as a candidate. In ruling as such, Resolution No. 7800 which was considered as infringement of the powers of the legislature, the Court reiterated an earlier ruling:

> 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.[21]

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

Responding to the above ruling, the Comelec's subsequent Resolution on the same matter deleted the enumerated grounds, interpreted by the Court as improper for a petition for disqualification, found in Comelec Resolution 7800.[22]

It is thus clear that the ground invoked by Sarip in his Petition for Disqualification against Munder - the latter's alleged status as unregistered voter in the municipality - was inappropriate for the said petition. The said ground should have been raised in a petition to cancel Munder's CoC. Since the two remedies vary in nature, they also vary in their prescriptive period. A petition to cancel a CoC gives a registered candidate the chance to question the qualification of a rival candidate for a shorter period: within 5 days from the last day of their filing of CoCs, but not later than 25 days from the filing of the CoC sought to be cancelled.[23] A petition for disqualification may be filed any day after the last day of the filing of CoC but not later than the date of the proclamation.[24]

The Comelec Second Division stated that the last day of filing of the CoCs was on 21 December 2009. Thus, the period to file a Petition to Deny Due Course or to Cancel Certificate of Candidacy had already prescribed when Sarip filed his petition against Munder.

It was therefore grave abuse of discretion on the part of the Comelec En Banc to gloss over the issue of whether the petition was one for disqualification or for the cancellation of CoC. The nature of the petition will determine whether the action has prescribed, and whether the Commission can take cognizance of the petition. In directly tackling the factual issues without determining whether it can properly take cognizance of the petition, the Comelec En Banc committed grave abuse of discretion.

Assuming arguendo that the Comelec En Banc could answer the factual issue of Munder's non-registration as a voter in Bubong by considering it as a ground for the disqualification of his candidacy, we find that the Comelec committed grave abuse of discretion in concluding that Munder the voter was not Munder the mayoralty candidate. We observe that the Comelec En Banc relied on the Voter's Certification indicating one Alfaiz Tocalo Munder registering for the first time in 2003, with 7 May 1984 as birth date, and stating therein that he was 18 years old at the time of the registration. We find this evidence insufficient to impeach the fact that he was a registered voter of Bubong, Lanao del Sur. In the first place, the registration was in 2003, while the election was in 2010. The said evidence would not negate the fact that in 2010, he had already attained eligibility to run for mayor. In such a small municipality like Bubong, the likelihood of not being able to know whether one has a namesake, especially when one is running for a public office, is very slim. Sarip should have proved that another Alfais Tocalo Munder is in existence, and that the latter is the registered voter and not herein petitioner. In such a case, Sarip's remedy is not a Petition for Disqualification, but a Petition to Deny Due Course or to Cancel Certificate of Candidacy which must comply with the prescriptive period. Otherwise, his remedy, after Munder has been proclaimed is to file a quo warranto action with the Regional Trial Court to prove that Munder lacks the eligibility required by law.

It may be true that in 2003, Munder, who was still a minor, registered himself as a voter and misrepresented that he was already of legal age. Even if it was deliberate, we cannot review his past political acts in this petition. Neither can the Comelec review those acts in an inappropriate remedy. In so doing, it committed grave abuse of discretion, and the act resulting therefrom must be nullified.

With this conclusion, Sarip's petition has become moot. There is no longer any issue of whether to apply the rule on succession to an elective office, since Munder is necessarily established in the position for which the people have elected him.

IN VIEW OF THE FOREGOING, G.R. No. 194076 is hereby GRANTED. The Comelec En Banc Resolution dated 4 October 2010 which granted the petition to disqualify Alfais Tocalo Munder as Mayor of Bubong, Lanao

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

del Sur is hereby NULLIFIED and SET ASIDE. The Comelec Second Division Resolution dated 29 June 2010 dismissing the petition for disqualification filed by Atty. Tago R. Sarip against Alfais Tocalo Munder is REINSTATED. G.R. No. 194160 is hereby DISMISSED. For having been rendered moot by this Decision, the Temporary Restraining Order we issued on 18 January 2011 in favor of Alfais Tocalo Munder is hereby made permanent.

SO ORDERED.

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

---

* Penned by Commissioner Rene V. Sarmiento; with the concurrence of Chairman Jose A. R. Melo, Commissioners Lucenito N. Tagle, Armando C. Velasco, Gregorio Y. Larrazabal; and the dissent of Nicodemo T. Ferrer, Elias R. Yusoph.

[1] Rollo (G.R. No. 194076) pp 48-54; Rollo (G.R. No. 194160) pp 32-38.

[2] Rendered per curiam by the Second Division composed of Presiding Commissioner Nicodemo T. Ferrer, and Commissioners Lucenito N. Tagle (on leave) and Elias R. Yusoph.

[3]Comelec Resolution No. 8678, Guidelines on the Filing of Certificates of Candidacy and Nomination of Official Candidates of Registered Political Parties in Connection with the May 10, 2010 National and Local Elections, promulgated on 06 October 2009.

[4] See also Section 78, Omnibus Election Code.

[5] Rollo (G.R. No. 194076), pp 57-65; Rollo (G.R. No. 194169), pp 57-65.

[6] Id. at 69; 53.

[7] Id. at 70; 54.

[8] Id. at 207; 52.

[9] Rollo(G.R. No. 194076), pp 75-77.

[10] Id. at 75-82.

[11] Id. at 44-46.

[12] Id. at 114-122.

[13] Id at 51.

[14] Id at 52-53.

[15] Id. at 215-219.

[16] 1987 Constitution, Art. IX, Sec. 2(1).

[17] G.R. No. 192280. January 25, 2011, 640 SCRA 473.

[18] See Id. at 482-483.

[19] G.R. No. 179695, 18 December 2008, 574 SCRA 782.

[20] Id. at 794-796.

[21] Id. at 798, citing Loong v. Commission on Elections, G.R. No. 93986, 22 December 1992, 216 SCRA 760, 767, cited by Chief Justice Hilario G. Davide, Jr. (ret.) in his Dissenting Opinion in Aquino v. Commission on Elections, G.R. No. 120265, 18 September 1995, 248 SCRA 400, 445-447.

[22] See Comelec Resolution No. 8696.

[23] OEC, Sec. 69.

[24] Comelec Resolution No. 8696, Section 4(B).

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.