

MAYOR BARBARA RUBY C. TALAGA, PETITIONER, VS. COMMISSION ON ELECTIONS AND RODERICK A. ALCALA, RESPONDENTS.

G.R. No. 196804. October 09, 2012

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

In focus in these consolidated special civil actions are the disqualification of a substitute who was proclaimed the winner of a mayoralty election; and the ascertainment of who should assume the office following the substitute's disqualification.

The consolidated petitions for certiorari seek to annul and set aside the En Banc Resolution issued on May 20, 2011 in SPC No. 10-024 by the Commission on Elections (COMELEC), the dispositive portion of which states:

WHEREFORE, judgment is hereby rendered:

1. REVERSING and SETTING ASIDE the January 11, 2011 Resolution of the Second Division;
2. GRANTING the petition-in-intervention of Roderick A. Alcala;
3. ANNULING the election and proclamation of respondent Barbara C. Talaga as mayor of Lucena City and CANCELLING the Certificate of Canvass and Proclamation issued therefor;
4. Ordering respondent Barbara Ruby Talaga to cease and desist from discharging the functions of the Office of the Mayor;
5. In view of the permanent vacancy in the Office of the Mayor of Lucena City, the proclaimed Vice-Mayor is ORDERED to succeed as Mayor as provided under Section 44 of the Local Government Code;
6. DIRECTING the Clerk of Court of the Commission to furnish copies of this Resolution to the Office of the President of the Philippines, the Department of Interior and Local Government, the Department of Finance and the Secretary of the Sangguniang Panglunsod of Lucena City.

Let the Department of Interior and Local Government and the Regional Election Director of Region IV of COMELEC implement this resolution.

SO ORDERED.[1]

Antecedents

On November 26, 2009 and December 1, 2009, Ramon Talaga (Ramon) and Philip M. Castillo (Castillo) respectively filed their certificates of candidacy (CoCs) for the position of Mayor of Lucena City to be contested in the scheduled May 10, 2010 national and local elections.[2] Ramon, the official candidate of the Lakas-Kampi-CMD,[3] declared in his CoC that he was eligible for the office he was seeking to be elected to.

Four days later, or on December 5, 2009, Castillo filed with the COMELEC a petition denominated as In the Matter of the Petition to Deny Due Course to or Cancel Certificate of Candidacy of Ramon Y. Talaga, Jr. as

Mayor for Having Already Served Three (3) Consecutive Terms as a City Mayor of Lucena, which was docketed as SPA 09-029 (DC).[4] He alleged therein that Ramon, despite knowing that he had been elected and had served three consecutive terms as Mayor of Lucena City, still filed his CoC for Mayor of Lucena City in the May 10, 2010 national and local elections.

The pertinent portions of Castillo's petition follow:

1. Petitioner is of legal age, Filipino, married, and a resident of Barangay Mayao Crossing, Lucena City but may be served with summons and other processes of this Commission at the address of his counsel at 624 Aurora Blvd., Lucena City 4301;
2. Respondent Ramon Y. Talaga, Jr. is likewise of legal age, married, and a resident of Barangay Ibabang Iyam, Lucena City and with postal address at the Office of the City Mayor, City Hall, Lucena City, where he may be served with summons and other processes of this Commission;
3. Petitioner, the incumbent city vice-mayor of Lucena having been elected during the 2007 local elections, is running for city mayor of Lucena under the Liberal party this coming 10 May 2010 local elections and has filed his certificate of candidacy for city mayor of Lucena;
4. Respondent was successively elected mayor of Lucena City in 2001, 2004, and 2007 local elections based on the records of the Commission on Elections of Lucena City and had fully served the aforesaid three (3) terms without any voluntary and involuntary interruption;
5. Except the preventive suspension imposed upon him from 13 October 2005 to 14 November 2005 and from 4 September 2009 to 30 October 2009 pursuant to Sandiganbayan 4th Division Resolution in Criminal Case No. 27738 dated 3 October 2005, the public service as city mayor of the respondent is continuous and uninterrupted under the existing laws and jurisprudence;
6. There is no law nor jurisprudence to justify the filing of the certificate of candidacy of the respondent, hence, such act is outrightly unconstitutional, illegal, and highly immoral;
7. Respondent, knowing well that he was elected for and had fully served three (3) consecutive terms as a city mayor of Lucena, he still filed his Certificate of Candidacy for City Mayor of Lucena for this coming 10 May 2010 national and local elections;
8. Under the Constitution and existing Election Laws, New Local Government Code of the Philippines, and jurisprudence the respondent is no longer entitled and is already disqualified to be a city mayor for the fourth consecutive term;
9. The filing of the respondent for the position of city mayor is highly improper, unlawful and is potentially injurious and prejudicial to taxpayers of the City of Lucena; and
10. It is most respectfully prayed by the petitioner that the respondent be declared disqualified and no longer entitled to run in public office as city mayor of Lucena City based on the existing law and jurisprudence.[5]

The petition prayed for the following reliefs, to wit:

WHEREFORE, premises considered, it is respectfully prayed that the Certificate of Candidacy filed by the respondent be denied due course to or cancel the same and that he be declared as a disqualified candidate under the existing Election Laws and by the provisions of the New Local Government Code.[6] (Emphasis supplied.)

Ramon countered that that the Sandiganbayan had preventively suspended him from office during his second and third terms; and that the three-term limit rule did not then apply to him pursuant to the prevailing jurisprudence[7] to the effect that an involuntary separation from office amounted to an interruption of continuity of service for purposes of the application of the three-term limit rule.

In the meantime, on December 23, 2009, the Court promulgated the ruling in *Aldovino, Jr. v. Commission on Elections*,^[8] holding that preventive suspension, being a mere temporary incapacity, was not a valid ground for avoiding the effect of the three-term limit rule. Thus, on December 30, 2009, Ramon filed in the COMELEC a Manifestation with Motion to Resolve, taking into account the intervening ruling in *Aldovino*. Relevant portions of his Manifestation with Motion to Resolve are quoted herein, viz:

4. When respondent filed his certificate of candidacy for the position of Mayor of Lucena City, the rule that ‘where the separation from office is caused by reasons beyond the control of the officer – i.e. involuntary – the service of term is deemed interrupted’ has not yet been overturned by the new ruling of the Supreme Court. As a matter of fact, the prevailing rule then of the Honorable Commission in [sic] respect of the three (3)-term limitation was its decision in the case of *Aldovino, et al. vs. Asilo* where it stated:

“Thus, even if respondent was elected during the 2004 elections, which was supposedly his third and final term as city councilor, the same cannot be treated as a complete service or full term in office since the same was interrupted when he was suspended by the Sandiganbayan Fourth Division. And the respondent actually heeded the suspension order since he did not receive his salary during the period October 16-31 and November 1-15 by reason of his actual suspension from office. And this was further bolstered by the fact that the DILG issued a Memorandum directing him, among others, to reassume his position.” (Emphasis supplied.)

5. Clearly, there was no misrepresentation on the part of respondent as would constitute a ground for the denial of due course to and/or the cancellation of respondent’s certificate of candidacy at the time he filed the same. Petitioner’s ground for the denial of due course to and/or the cancellation of respondent’s certificate of candidacy thus has no basis, in fact and in law, as there is no ground to warrant such relief under the Omnibus Election Code and/or its implementing laws.

6. Pursuant, however, to the new ruling of the Supreme Court in respect of the issue on the three (3)-term limitation, respondent acknowledges that he is now DISQUALIFIED to run for the position of Mayor of Lucena City having served three (3) (albeit interrupted) terms as Mayor of Lucena City prior to the filing of his certificate of candidacy for the 2010 elections.

7. In view of the foregoing premises and new jurisprudence on the matter, respondent respectfully submits the present case for decision declaring him as DISQUALIFIED to run for the position of Mayor of Lucena City.^[9]

Notwithstanding his express recognition of his disqualification to run as Mayor of Lucena City in the May 10, 2010 national and local elections, Ramon did not withdraw his CoC.

Acting on Ramon’s Manifestation with Motion to Resolve, the COMELEC First Division issued a Resolution on April 19, 2010,^[10] disposing as follows:

WHEREFORE, premises considered, the instant Petition is hereby GRANTED. Accordingly, Ramon Y. Talaga, Jr. is hereby declared DISQUALIFIED to run for Mayor of Lucena City for the 10 May 2010 National and Local Elections.

SO ORDERED.

Initially, Ramon filed his Verified Motion for Reconsideration against the April 19, 2010 Resolution of the COMELEC First Division.^[11] Later on, however, he filed at 9:00 a.m. of May 4, 2010 an Ex-parte Manifestation of Withdrawal of the Pending Motion for Reconsideration.^[12] At 4:30 p.m. on the same date, Barbara Ruby filed her own CoC for Mayor of Lucena City in substitution of Ramon, attaching thereto the Certificate of Nomination and Acceptance (CONA) issued by Lakas-Kampi-CMD, the party that had nominated Ramon.^[13]

On May 5, 2010, the COMELEC En Banc, acting on Ramon’s Ex parte Manifestation of Withdrawal, declared

the COMELEC First Division's Resolution dated April 19, 2010 final and executory.[14]

On election day on May 10, 2010, the name of Ramon remained printed on the ballots but the votes cast in his favor were counted in favor of Barbara Ruby as his substitute candidate, resulting in Barbara Ruby being ultimately credited with 44,099 votes as against Castillo's 39,615 votes.[15]

Castillo promptly filed a petition in the City Board of Canvassers (CBOC) seeking the suspension of Barbara Ruby's proclamation.[16]

It was only on May 13, 2010 when the COMELEC En Banc, upon the recommendation of its Law Department,[17] gave due course to Barbara Ruby's CoC and CONA through Resolution No. 8917, thereby including her in the certified list of candidates.[18] Consequently, the CBOC proclaimed Barbara Ruby as the newly-elected Mayor of Lucena City.[19]

On May 20, 2010, Castillo filed a Petition for Annulment of Proclamation with the COMELEC,[20] docketed as SPC 10-024. He alleged that Barbara Ruby could not substitute Ramon because his CoC had been cancelled and denied due course; and Barbara Ruby could not be considered a candidate because the COMELEC En Banc had approved her substitution three days after the elections; hence, the votes cast for Ramon should be considered stray.

In her Comment on the Petition for Annulment of Proclamation,[21] Barbara Ruby maintained the validity of her substitution. She countered that the COMELEC En Banc did not deny due course to or cancel Ramon's COC, despite a declaration of his disqualification, because there was no finding that he had committed misrepresentation, the ground for the denial of due course to or cancellation of his COC. She prayed that with her valid substitution, Section 12 of Republic Act No. 9006[22] applied, based on which the votes cast for Ramon were properly counted in her favor.

On July 26, 2010, Roderick Alcala (Alcala), the duly-elected Vice Mayor of Lucena City, sought to intervene,[23] positing that he should assume the post of Mayor because Barbara Ruby's substitution had been invalid and Castillo had clearly lost the elections.

On January 11, 2011, the COMELEC Second Division dismissed Castillo's petition and Alcala's petition-in-intervention,[24] holding:

In the present case, Castillo was notified of Resolution 8917 on May 13, 2010 as it was the basis for the proclamation of Ruby on that date. He, however, failed to file any action within the prescribed period either in the Commission or the Supreme Court assailing the said resolution. Thus, the said resolution has become final and executory. It cannot anymore be altered or reversed.

x x x x

x x x. A close perusal of the petition filed by Castillo in SPA 10-029 (Dc) shows that it was actually for the disqualification of Ramon for having served three consecutive terms, which is a ground for his disqualification under the Constitution in relation to Section 4(b)3 of Resolution 8696. There was no mention therein that Ramon has committed material representation that would be a ground for the cancellation or denial of due course to the CoC of Ramon under Section 78 of the Omnibus Election Code. The First Division, in fact, treated the petition as one for disqualification as gleaned from the body of the resolution and its dispositive portion quoted above. This treatment of the First Division of the petition as one for disqualification only is affirmed by the fact that its members signed Resolution No. 8917 where it was clearly stated that the First Division only disqualified Ramon.

Having been disqualified only, the doctrine laid down in *Miranda v. Abaya* is not applicable. Ramon was

rightly substituted by Ruby. As such, the votes for Ramon cannot be considered as stray votes but should be counted in favor of Ruby since the substituted and the substitute carry the same surname – Talaga, as provided in Section 12 of Republic Act No. 9006.

x x x x

Moreover, there is no provision in the Omnibus Election Code or any election laws for that matter which requires that the substitution and the Certificate of Candidacy of the substitute should be approved and given due course first by the Commission or the Law Department before it can be considered as effective. All that Section 77 of the Omnibus Election Code as implemented by Section 13 of Resolution No. 8678 requires is that it should be filed with the proper office. The respondent is correct when she argued that in fact even the BEI can receive a CoC of a substitute candidate in case the cause for the substitution happened between the day before the election and mid-day of election day. Thus, even if the approval of the substitution was made after the election, the substitution became effective on the date of the filing of the CoC with the Certificate of Nomination and Acceptance.

There being no irregularity in the substitution by Ruby of Ramon as candidate for mayor of Lucena City, the counting of the votes of Ramon in favor of Ruby is proper. The proclamation, thus, of Ruby as mayor elect of Lucena City is in order. Hence, we find no cogent reason to annul the proclamation of respondent Barbara Ruby C. Talaga as the duly elected Mayor of the City of Lucena after the elections conducted on May 10, 2010.[25]

Acting on Castillo and Alcala's respective motions for reconsideration, the COMELEC En Banc issued the assailed Resolution dated May 20, 2011 reversing the COMELEC Second Division's ruling.[26] Pointing out that: (a) Resolution No. 8917 did not attain finality for being issued without a hearing as a mere incident of the COMELEC's ministerial duty to receive the COCs of substitute candidates; (b) Resolution No. 8917 was based on the wrong facts; and (c) Ramon's disqualification was resolved with finality only on May 5, 2010, the COMELEC En Banc concluded that Barbara Ruby could not have properly substituted Ramon but had simply become an additional candidate who had filed her COC out of time; and held that Vice Mayor Alcala should succeed to the position pursuant to Section 44 of the Local Government Code (LGC).[27]

Issues

The core issue involves the validity of the substitution by Barbara Ruby as candidate for the position of Mayor of Lucena City in lieu of Ramon, her husband.

Ancillary to the core issue is the determination of who among the contending parties should assume the contested elective position.

Ruling

The petitions lack merit.

1.

Existence of a valid CoC is a condition
sine qua non for a valid substitution

The filing of a CoC within the period provided by law is a mandatory requirement for any person to be considered a candidate in a national or local election. This is clear from Section 73 of the Omnibus Election Code, to wit:

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

Section 74 of the Omnibus Election Code specifies the contents of a COC, viz:

Section 74. Contents of certificate of candidacy.—The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge. x x x

The evident purposes of the requirement for the filing of CoCs and in fixing the time limit for filing them are, namely: (a) to enable the voters to know, at least 60 days prior to the regular election, the candidates from among whom they are to make the choice; and (b) to avoid confusion and inconvenience in the tabulation of the votes cast. If the law does not confine to the duly-registered candidates the choice by the voters, there may be as many persons voted for as there are voters, and votes may be cast even for unknown or fictitious persons as a mark to identify the votes in favor of a candidate for another office in the same election.[28] Moreover, according to *Sinaca v. Mula*,[29] the CoC is:

x x x in the nature of a formal manifestation to the whole world of the candidate's political creed or lack of political creed. It is a statement of a person seeking to run for a public office certifying that he announces his candidacy for the office mentioned and that he is eligible for the office, the name of the political party to which he belongs, if he belongs to any, and his post-office address for all election purposes being as well stated.

Accordingly, a person's declaration of his intention to run for public office and his affirmation that he possesses the eligibility for the position he seeks to assume, followed by the timely filing of such declaration, constitute a valid CoC that render the person making the declaration a valid or official candidate.

There are two remedies available to prevent a candidate from running in an electoral race. One is through a petition for disqualification and the other through a petition to deny due course to or cancel a certificate of candidacy. The Court differentiated the two remedies in *Fermin v. Commission on Elections*,[30] thuswise:

x x x [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.[31]

Inasmuch as the grounds for disqualification under Section 68 of the Omnibus Election Code (i.e., prohibited acts of candidates, and the fact of a candidate's permanent residency in another country when that fact affects the residency requirement of a candidate) are separate and distinct from the grounds for the cancellation of or denying due course to a COC (i.e., nuisance candidates under Section 69 of the Omnibus Election Code; and material misrepresentation under Section 78 of the Omnibus Election Code), the Court has recognized in *Miranda v. Abaya*[32] that the following circumstances may result from the granting of the petitions, to wit:

(1)

A candidate may not be qualified to run for election but may have filed a valid CoC;

(2)

A candidate may not be qualified and at the same time may not have filed a valid CoC; and

(3)

A candidate may be qualified but his CoC may be denied due course or cancelled.

In the event that a candidate is disqualified to run for a public office, or dies, or withdraws his CoC before the elections, Section 77 of the Omnibus Election Code provides the option of substitution, to wit:

Section 77. Candidates in case of death, disqualification or withdrawal. — If after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified. The substitute candidate nominated by the political party concerned may file his certificate of candidacy for the office affected in accordance with the preceding sections not later than mid-day of the day of the election. If the death, withdrawal or disqualification should occur between the day before the election and mid-day of election day, said certificate may be filed with any board of election inspectors in the political subdivision where he is a candidate, or, in the case of candidates to be voted for by the entire electorate of the country, with the Commission.

Nonetheless, whether the ground for substitution is death, withdrawal or disqualification of a candidate, Section 77 of the Omnibus Election Code unequivocally states that only an official candidate of a registered or accredited party may be substituted.

Considering that a cancelled CoC does not give rise to a valid candidacy,[33] there can be no valid substitution of the candidate under Section 77 of the Omnibus Election Code. It should be clear, too, that a candidate who does not file a valid CoC may not be validly substituted, because a person without a valid CoC is not considered a candidate in much the same way as any person who has not filed a CoC is not at all a candidate.[34]

Likewise, a candidate who has not withdrawn his CoC in accordance with Section 73 of the Omnibus Election Code may not be substituted. A withdrawal of candidacy can only give effect to a substitution if the substitute candidate submits prior to the election a sworn CoC as required by Section 73 of the Omnibus Election Code.[35]

2.

Declaration of Ramon's disqualification rendered his CoC invalid; hence, he was not a valid candidate to be properly substituted

In the light of the foregoing rules on the CoC, the Court concurs with the conclusion of the COMELEC En Banc that the Castillo petition in SPA 09-029 (DC) was in the nature of a petition to deny due course to or cancel a CoC under Section 78 of the Omnibus Election Code.

In describing the nature of a Section 78 petition, the Court said in *Fermin v. Commission on Elections*:[36]

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.

Castillo's petition contained essential allegations pertaining to a Section 78 petition, namely: (a) Ramon made a false representation in his CoC; (b) the false representation referred to a material matter that would affect the substantive right of Ramon as candidate (that is, the right to run for the election for which he filed his certificate); and (c) Ramon made the false representation with the intention to deceive the electorate as to his qualification for public office or deliberately attempted to mislead, misinform, or hide a fact that would otherwise render him ineligible.[37] The petition expressly challenged Ramon's eligibility for public office based on the prohibition stated in the Constitution and the Local Government Code against any person serving three consecutive terms, and specifically prayed that "the Certificate of Candidacy filed by the respondent [Ramon] be denied due course to or cancel the same and that he be declared as a disqualified candidate." [38]

The denial of due course to or the cancellation of the CoC under Section 78 involves a finding not only that a person lacks a qualification but also that he made a material representation that is false.[39] A petition for the denial of due course to or cancellation of CoC that is short of the requirements will not be granted. In *Mitra v. Commission on Elections*, [40] the Court stressed that there must also be a deliberate attempt to mislead, thus:

The false representation under Section 78 must likewise be a "deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible." Given the purpose of the requirement, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office. Thus, the misrepresentation that Section 78 addresses cannot be the result of a mere innocuous mistake, and cannot exist in a situation where the intent to deceive is patently absent, or where no deception on the electorate results. The deliberate character of the misrepresentation necessarily follows from a consideration of the consequences of any material falsity: a candidate who falsifies a material fact cannot run; if he runs and is elected, he cannot serve; in both cases, he can be prosecuted for violation of the election laws.

It is underscored, however, that a Section 78 petition should not be interchanged or confused with a Section 68 petition. The remedies under the two sections are different, for they are based on different grounds, and can result in different eventualities.[41] A person who is disqualified under Section 68 is prohibited to continue as a candidate, but a person whose CoC is cancelled or denied due course under Section 78 is not considered as a candidate at all because his status is that of a person who has not filed a CoC.[42] *Miranda v. Abaya* [43] has clarified that a candidate who is disqualified under Section 68 can be validly substituted pursuant to Section 77 because he remains a candidate until disqualified; but a person whose CoC has been denied due course or cancelled under Section 78 cannot be substituted because he is not considered a candidate.

To be sure, the cause of Ramon's ineligibility (i.e., the three-term limit) is enforced both by the Constitution and statutory law. Article X, Section 8 of the 1987 Constitution provides:

Section 8. The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

Section 43 of the Local Government Code reiterates the constitutional three-term limit for all elective local officials, to wit:

Section 43. Term of Office. – (a) x x x

(b) No local elective official shall serve for more than three (3) consecutive terms in the same position. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the

continuity of service for the full term for which the elective official concerned was elected. (Emphasis supplied.)

The objective of imposing the three-term limit rule was “to avoid the evil of a single person accumulating excessive power over a particular territorial jurisdiction as a result of a prolonged stay in the same office.” The Court underscored this objective in *Aldovino, Jr. v. Commission on Elections*,^[44] stating:

x x x [T]he framers of the Constitution specifically included an exception to the people’s freedom to choose those who will govern them in order to avoid the evil of a single person accumulating excessive power over a particular territorial jurisdiction as a result of a prolonged stay in the same office. To allow petitioner Latasa to vie for the position of city mayor after having served for three consecutive terms as a municipal mayor would obviously defeat the very intent of the framers when they wrote this exception. Should he be allowed another three consecutive terms as mayor of the City of Digos, petitioner would then be possibly holding office as chief executive over the same territorial jurisdiction and inhabitants for a total of eighteen consecutive years. This is the very scenario sought to be avoided by the Constitution, if not abhorred by it.

To accord with the constitutional and statutory proscriptions, Ramon was absolutely precluded from asserting an eligibility to run as Mayor of Lucena City for the fourth consecutive term. Resultantly, his CoC was invalid and ineffectual ab initio for containing the incurable defect consisting in his false declaration of his eligibility to run. The invalidity and inefficacy of his CoC made his situation even worse than that of a nuisance candidate because the nuisance candidate may remain eligible despite cancellation of his CoC or despite the denial of due course to the CoC pursuant to Section 69 of the Omnibus Election Code.^[45]

Ramon himself specifically admitted his ineligibility when he filed his Manifestation with Motion to Resolve on December 30, 2009 in the COMELEC.^[46] That sufficed to render his CoC invalid, considering that for all intents and purposes the COMELEC’s declaration of his disqualification had the effect of announcing that he was no candidate at all.

We stress that a non-candidate like Ramon had no right to pass on to his substitute. As *Miranda v. Abaya* aptly put it:

Even on the most basic and fundamental principles, it is readily understood that the concept of a substitute presupposes the existence of the person to be substituted, for how can a person take the place of somebody who does not exist or who never was. The Court has no other choice but to rule that in all the instances enumerated in Section 77 of the Omnibus Election Code, the existence of a valid certificate of candidacy seasonably filed is a requisite sine qua non.

All told, a disqualified candidate may only be substituted if he had a valid certificate of candidacy in the first place because, if the disqualified candidate did not have a valid and seasonably filed certificate of candidacy, he is and was not a candidate at all. If a person was not a candidate, he cannot be substituted under Section 77 of the Code. Besides, if we were to allow the so-called “substitute” to file a “new” and “original” certificate of candidacy beyond the period for the filing thereof, it would be a crystalline case of unequal protection of the law, an act abhorred by our Constitution.^[47] (Emphasis supplied)

3.

Granting without any qualification of petition in SPA No. 09-029(DC) manifested COMELEC’s intention to declare Ramon disqualified and to cancel his CoC

That the COMELEC made no express finding that Ramon committed any deliberate misrepresentation in his CoC was of little consequence in the determination of whether his CoC should be deemed cancelled or not.

In *Miranda v. Abaya*,^[48] the specific relief that the petition prayed for was that the CoC “be not given due course

and/or cancelled.” The COMELEC categorically granted “the petition” and then pronounced — in apparent contradiction — that Joel Pempe Miranda was “disqualified.” The Court held that the COMELEC, by granting the petition without any qualification, disqualified Joel Pempe Miranda and at the same time cancelled Jose Pempe Miranda’s CoC. The Court explained:

The question to settle next is whether or not aside from Joel “Pempe” Miranda being disqualified by the Comelec in its May 5, 1998 resolution, his certificate of candidacy had likewise been denied due course and cancelled.

The Court rules that it was.

Private respondent’s petition in SPA No. 98-019 specifically prayed for the following:

WHEREFORE, it is respectfully prayed that the Certificate of Candidacy filed by respondent for the position of Mayor for the City of Santiago be not given due course and/or cancelled.

Other reliefs just and equitable in the premises are likewise prayed for.

(Rollo, p. 31; Emphasis ours.)

In resolving the petition filed by private respondent specifying a very particular relief, the Comelec ruled favorably in the following manner:

WHEREFORE, in view of the foregoing, the Commission (FIRST DIVISION) GRANTS the Petition. Respondent JOSE “Pempe” MIRANDA is hereby DISQUALIFIED from running for the position of mayor of Santiago City, Isabela, in the May 11, 1998 national and local elections.

SO ORDERED.

(p.43, Rollo; Emphasis ours.)

From a plain reading of the dispositive portion of the Comelec resolution of May 5, 1998 in SPA No. 98-019, it is sufficiently clear that the prayer specifically and particularly sought in the petition was GRANTED, there being no qualification on the matter whatsoever. The disqualification was simply ruled over and above the granting of the specific prayer for denial of due course and cancellation of the certificate of candidacy. x x x.[49]

x x x x

x x x. There is no dispute that the complaint or petition filed by private respondent in SPA No. 98-019 is one to deny due course and to cancel the certificate of candidacy of Jose “Pempe” Miranda (Rollo, pp. 26-31). There is likewise no question that the said petition was GRANTED without any qualification whatsoever. It is rather clear, therefore, that whether or not the Comelec granted any further relief in SPA No. 98-019 by disqualifying the candidate, the fact remains that the said petition was granted and that the certificate of candidacy of Jose “Pempe” Miranda was denied due course and cancelled. x x x.[50]

The crucial point of *Miranda v. Abaya* was that the COMELEC actually granted the particular relief of cancelling or denying due course to the CoC prayed for in the petition by not subjecting that relief to any qualification.

Miranda v. Abaya applies herein. Although Castillo’s petition in SPA No. 09-029 (DC) specifically sought both the disqualification of Ramon and the denial of due course to or cancellation of his CoC, the COMELEC categorically stated in the Resolution dated April 19, 2010 that it was granting the petition. Despite the COMELEC making no finding of material misrepresentation on the part of Ramon, its granting of Castillo’s petition without express qualifications manifested that the COMELEC had cancelled Ramon’s CoC based on his apparent ineligibility. The Resolution dated April 19, 2010 became final and executory because Castillo did not

move for its reconsideration, and because Ramon later withdrew his motion for reconsideration filed in relation to it.

4.

Elected Vice Mayor must succeed
and assume the position of Mayor
due to a permanent vacancy in the office

On the issue of who should assume the office of Mayor of Lucena City, Castillo submits that the doctrine on the rejection of the second-placer espoused in *Labo, Jr. v. Commission on Elections*[51] should not apply to him because Ramon's disqualification became final prior to the elections.[52] Instead, he cites *Cayat v. Commission on Elections*,[53] where the Court said:

x x x [I]n *Labo* there was no final judgment of disqualification before the elections. The doctrine on the rejection of the second placer was applied in *Labo* and a host of other cases because the judgment declaring the candidate's disqualification in *Labo* and the other cases had not become final before the elections. To repeat, *Labo* and the other cases applying the doctrine on the rejection of the second placer have one common essential condition — the disqualification of the candidate had not become final before the elections. This essential condition does not exist in the present case.

Thus, in *Labo*, *Labo's* disqualification became final only on 14 May 1992, three days after the 11 May 1992 elections. On election day itself, *Labo* was still legally a candidate. In the present case, *Cayat* was disqualified by final judgment 23 days before the 10 May 2004 elections. On election day, *Cayat* was no longer legally a candidate for mayor. In short, *Cayat's* candidacy for Mayor of Buguias, Benguet was legally non-existent in the 10 May 2004 elections.

The law expressly declares that a candidate disqualified by final judgment before an election cannot be voted for, and votes cast for him shall not be counted. This is a mandatory provision of law. Section 6 of Republic Act No. 6646, The Electoral Reforms Law of 1987, states:

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. (Emphasis added)

Section 6 of the Electoral Reforms Law of 1987 covers two situations. The first is when the disqualification becomes final before the elections, which is the situation covered in the first sentence of Section 6. The second is when the disqualification becomes final after the elections, which is the situation covered in the second sentence of Section 6.

The present case falls under the first situation. Section 6 of the Electoral Reforms Law governing the first situation is categorical: a candidate disqualified by final judgment before an election cannot be voted for, and votes cast for him shall not be counted. The Resolution disqualifying *Cayat* became final on 17 April 2004, way before the 10 May 2004 elections. Therefore, all the 8,164 votes cast in *Cayat's* favor are stray. *Cayat* was never a candidate in the 10 May 2004 elections. *Palileng's* proclamation is proper because he was the sole and only candidate, second to none.[54]

Relying on the pronouncement in *Cayat*, Castillo asserts that he was entitled to assume the position of Mayor of Lucena City for having obtained the highest number of votes among the remaining qualified candidates.

It would seem, then, that the date of the finality of the COMELEC resolution declaring Ramon disqualified is decisive. According to Section 10, Rule 19 of the COMELEC's Resolution No. 8804,[55] a decision or resolution of a Division becomes final and executory after the lapse of five days following its promulgation unless a motion for reconsideration is seasonably filed. Under Section 8, Rule 20 of Resolution No. 8804, the decision of the COMELEC En Banc becomes final and executory five days after its promulgation and receipt of notice by the parties.

The COMELEC First Division declared Ramon disqualified through its Resolution dated April 19, 2010, the copy of which Ramon received on the same date.[56] Ramon filed a motion for reconsideration on April 21, 2010[57] in accordance with Section 7 of COMELEC Resolution No. 8696,[58] but withdrew the motion on May 4, 2010,[59] ostensibly to allow his substitution by Barbara Ruby. On his part, Castillo did not file any motion for reconsideration. Such circumstances indicated that there was no more pending matter that could have effectively suspended the finality of the ruling in due course. Hence, the Resolution dated April 19, 2010 could be said to have attained finality upon the lapse of five days from its promulgation and receipt of it by the parties. This happened probably on April 24, 2010. Despite such finality, the COMELEC En Banc continued to act on the withdrawal by Ramon of his motion for reconsideration through the May 5, 2010 Resolution declaring the April 19, 2010 Resolution of the COMELEC First Division final and executory.

Yet, we cannot agree with Castillo's assertion that with Ramon's disqualification becoming final prior to the May 10, 2010 elections, the ruling in Cayat was applicable in his favor. Barbara Ruby's filing of her CoC in substitution of Ramon significantly differentiated this case from the factual circumstances obtaining in Cayat. Rev. Fr. Nardo B. Cayat, the petitioner in Cayat, was disqualified on April 17, 2004, and his disqualification became final before the May 10, 2004 elections. Considering that no substitution of Cayat was made, Thomas R. Palileng, Sr., his rival, remained the only candidate for the mayoralty post in Buguias, Benguet. In contrast, after Barbara Ruby substituted Ramon, the May 10, 2010 elections proceeded with her being regarded by the electorate of Lucena City as a bona fide candidate. To the electorate, she became a contender for the same position vied for by Castillo, such that she stood on the same footing as Castillo. Such standing as a candidate negated Castillo's claim of being the candidate who obtained the highest number of votes, and of being consequently entitled to assume the office of Mayor.

Indeed, Castillo could not assume the office for he was only a second placer. Labo, Jr. should be applied. There, the Court emphasized that the candidate obtaining the second highest number of votes for the contested office could not assume the office despite the disqualification of the first placer because the second placer was "not the choice of the sovereign will." [60] Surely, the Court explained, a minority or defeated candidate could not be deemed elected to the office.[61] There was to be no question that the second placer lost in the election, was repudiated by the electorate, and could not assume the vacated position.[62] No law imposed upon and compelled the people of Lucena City to accept a loser to be their political leader or their representative.[63]

The only time that a second placer is allowed to take the place of a disqualified winning candidate is when two requisites concur, namely: (a) the candidate who obtained the highest number of votes is disqualified; and (b) the electorate was fully aware in fact and in law of that candidate's disqualification as to bring such awareness within the realm of notoriety but the electorate still cast the plurality of the votes in favor of the ineligible candidate.[64] Under this sole exception, the electorate may be said to have waived the validity and efficacy of their votes by notoriously misapplying their franchise or throwing away their votes, in which case the eligible candidate with the second highest number of votes may be deemed elected.[65] But the exception did not apply in favor of Castillo simply because the second element was absent. The electorate of Lucena City were not the least aware of the fact of Barbara Ruby's ineligibility as the substitute. In fact, the COMELEC En Banc issued the Resolution finding

her substitution invalid only on May 20, 2011, or a full year after the elections.

On the other hand, the COMELEC En Banc properly disqualified Barbara Ruby from assuming the position of Mayor of Lucena City. To begin with, there was no valid candidate for her to substitute due to Ramon's ineligibility. Also, Ramon did not voluntarily withdraw his CoC before the elections in accordance with Section 73 of the Omnibus Election Code. Lastly, she was not an additional candidate for the position of Mayor of Lucena City because her filing of her CoC on May 4, 2010 was beyond the period fixed by law. Indeed, she was not, in law and in fact, a candidate.[66]

A permanent vacancy in the office of Mayor of Lucena City thus resulted, and such vacancy should be filled pursuant to the law on succession defined in Section 44 of the LGC, to wit:[67]

Section 44. Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor. - If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. x x x

WHEREFORE, the Court DISMISSES the petitions in these consolidated cases; AFFIRMS the Resolution issued on May 20, 2011 by the COMELEC En Banc; and ORDERS the petitioners to pay the costs of suit.

SO ORDERED.

Peralta, Villarama, Jr. and Perez, JJ., concur.

Sereno, C.J., join the dissent of J. Abad.

Carpio, J., join the dissent of J. Abad. Reason Talaga's COC was voted when filed.

Velasco, Jr., J., please see concurring opinion.

Leonardo-De Castro, J., join the concurring and dissenting opinion of J. Mendoza and in the result of the concurring & dissenting opinion of J. Brion.

Brion, J., see my dissenting opinion.

Del Castillo, J., I certify that J. Del Castillo concurred with the majority opinion of J. Bersamin.

Abad, J., see my dissenting opinion.

Mendoza, J., see concurring & dissenting opinion.

Reyes, J., I concur with J. Bersamin insofar as the conclusion of his decision.

Perlas-Bernabe, J., join the dissent of J. Mendoza.

[1] Rollo (G.R. No. 196804), pp. 50-51.

[2] Id. at 94, 96.

[3] Id. at 221.

[4] Id. at 88.

[5] Id. at 88-91.

[6] Id. at 91.

[7] Montebon v. Commission on Elections, G.R. No. 180444, April 9, 2008, 551 SCRA 50, 56.; Lonzanida v. Commission on Elections, G.R. No. 135150, July 28, 1999, 311 SCRA 602, 613; Borja, Jr. v. Commission on Elections, G.R. No. 133495, September 3, 1998, 295 SCRA 157.

[8] G.R. No. 184836, December 23, 2009, 609 SCRA 234, 263-264.

[9] Rollo (G.R. No. 196804), pp. 99-100.

[10] Id. at 102-105.

[11] Id. at 106-125.

[12] Id. at 126-129.

[13] Id. at 130-131.

[14] Id. at 133-134.

[15] Id. at 140

[16] Id. at 135-139.

[17] Id. at 179.

[18] Id. at 142-144

[19] Id. at 145

[20] Id. at 185-217.

[21] Id. at 283-298.

[22] Section 12. Substitution of candidates. – In case of valid substitutions after the official ballots have been printed, the votes cast for the substituted candidates shall be considered votes for the substitutes.

[23] Rollo (G.R. No. 196804), pp. 305-320.

[24] Id. at 79.

[25] Id. at 75-78.

[26] Id. at 50-51.

[27] Section 44. Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor. - If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. x x x

[28] *Miranda v. Abaya*, G.R. No. 136351, July 28, 1999, 311 SCRA 617, 625.

[29] G.R. No. 135691, September 27, 1999, 315 SCRA 266, 276.

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

[31] Id. at 794-796.

[32] *Supra* note 28, at 627.

[33] *Bautista v. Commission on Elections*, G.R. No. 133840, November 13, 1998, 298 SCRA 480, 493.

[34] *Miranda v. Abaya*, *supra* note 28, at 626-627.

[35] *Luna v. Commission on Elections*, G.R. No. 165983, April 24, 2007, 522 SCRA 107, 115.

[36] *Supra* note 30, at 792-794 (bold emphases and underscoring are part of the original text).

[37] *Salcedo II v. Commission on Elections*, G.R. No. 135886, August 16, 1999, 312 SCRA 447, 455.

[38] Rollo (G.R. No. 196804), p. 91.

[39] Section 78. Petition to deny due course to or cancel a certificate of candidacy. - A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

[40] G.R. No. 191938, July 2, 2010, 622 SCRA 744.

[41] *Fermin v. Commission on Elections*, supra note 30, at 794.

[42] *Id.* at 796.

[43] *Supra* note 28, at 627.

[44] *Supra* note 8, at 258; citing *Latasa v. Commission on Elections*, G.R. No. 154829, December 10, 2003, 417 SCRA 601.

[45] Section 69. Nuisance candidates. -- The Commission may motu proprio or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if it is shown that said certificate has been filed to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no bona fide intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate

[46] Rollo (G.R. No. 196804), pp. 98-101.

[47] *Supra* note 28, at 627.

[48] *Id.*

[49] *Id.* at 628.

[50] *Id.* at 632.

[51] G.R. No. 105111 & 105384, July 3, 1992, 211 SCRA 297.

[52] Rollo (G.R. No. 197015), pp. 18-19.

[53] G.R. No. 163776, April 24, 2007, 522 SCRA 23.

[54] *Id.* at 44-45.

[55] *In Re: COMELEC Rules of Procedure on Disputes in an Automated Election System in Connection with the May 10, 2010 Elections* (Promulgated on March 22, 2010).

[56] Rollo (G.R. No. 196804), p. 106.

[57] *Id.*

[58] Section 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 for implementation of the Decision, Resolution, Order or Ruling. x x x

[59] Rollo (G.R. No. 196804), pp. 126-129.

[60] Supra note 51, at 309.

[61] Id. at 312.

[62] Id. at 309-310; citing *Abella v. Commission on Elections*, 201 SCRA 253.

[63] *Gonzalez v. Commission on Elections*, G.R. No. 192856, March 8, 2011, 644 SCRA 761, 802; citing *Miranda v. Abaya*, G.R. No. 136351, July 28, 1999, 311 SCRA 617, 635.

[64] *Grego v. Commission on Elections*, G.R. No. 125955, June 19, 1997, 274 SCRA 481, 501.

[65] *Labo, Jr. v. Commission on Elections*, supra note 51, at 312.

[66] *Gador v. Commission on Elections*, L-52365, January 22, 1980, 95 SCRA 431.

[67] Section 44. Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor. – If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. x x x

CONCURRING OPINION

VELASCO, JR., J.:

In view of the opinions submitted, it is my view that there was no valid substitution of candidates for the mayoralty position in Lucena City between Ramon Talaga and his wife, Ruby Talaga. I likewise opine that considering the judgments on the disqualification of Ruben Talaga and on the validity of the substitution became final only after the May 10, 2010 elections, the laws of succession in case of permanent vacancies under Section 44 of the Local Government Code should apply.

First, Section 77 of the Omnibus Election Code[1] is clear that before a substitution of candidates for an elective position could be validly done, the official candidate of a registered or accredited political party should die, withdraw or must be disqualified for any cause. In the present case, the records will show that at the time Ruby C. Talaga filed her Certificate of Candidacy, or May 4, 2010, there was still no ground for substitution since the judgment on Ramon Talaga's disqualification had not yet attained finality.

Although the Decision of the Comelec was promulgated on April 19, 2010, the five-day period for its execution or implementation was suspended when Ramon Talaga filed a Motion for Reconsideration on April 21, 2010. This is clear under Section 2 of Rule 19 of the Comelec Rules of Procedure, which provides:

Section 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 proforma, suspends the execution or implementation of the decision, resolution, order or ruling. (Emphasis supplied)

It also appears that on the morning of May 4, 2012, or before Ruby Talaga filed her Certificate of Candidacy, Ramon Talaga filed a manifestation to withdraw his Motion for Reconsideration. However, this manifestation does not have any effect in determining the finality of an action for disqualification of a candidate. It is significant to note that under the Comelec Rules of Procedure, an action for disqualification of candidate is a Special Case or Special Action.[2] In relation thereto, Section 13 of Rule 18 of same rules provide that the finality of a judgment in a Special Action is based on the date of promulgation, to wit:

Section 13. Finality of Decisions or Resolutions. –

(a)

In ordinary actions, special proceedings, provisional remedies and special reliefs a decision or resolution of the Commission en banc shall become final and executory after thirty (30) days from its promulgation.

(b)

In Special Actions and Special Cases a decision or resolutions of the Commission en banc shall become final and executory after five (5) days from its promulgation unless restrained by the Supreme Court.

(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. (Emphasis supplied)

Notably, the finality of the judgment of the Comelec is reckoned from the date of the promulgation and not from the date of receipt of the resolution, decision or order – which is the standard rule in non-election related cases. To my mind, the rationale for such requirement would manifest by relating the aforementioned provision with Section 5 of Rule 18 of the same Rules, which provides:

Section 5. Promulgation. - The promulgation of a decision or resolution of the Commission or a Division shall be made on a date previously fixed, of which notice shall be served in advance upon the parties or their attorneys personally or by registered mail or by telegram. (Emphasis supplied)

It appears that because of the requirements of ‘advance notice’ and a ‘scheduled date’ of promulgation, there is an assurance that the parties to an election case would be present on the date of promulgation. Hence, the actual promulgation of a Comelec decision, order or resolution constitutes an actual notice to the parties.

In the present case, the five-day period in attaining finality judgment could have been reckoned from May 5, 2010 or the day when the Comelec En Banc issued an order dismissing the Motion for Reconsideration filed by Ramon Talaga. However, the records will show that the parties were not notified of the promulgation of the said May 5, 2010 Decision. In here, the notice of the May 5, 2010 Order of the Comelec En Banc was made only on the next day, or May 6, 2010 and was received by the parties or their counsels only on May 7, 2012 and May 13, 2010.[3] Therefore, when the parties were not notified of the promulgation of the May 5, 2010 Order of the Comelec En Banc as required by the Comelec Rules, the judgment on Ramon Talaga’s disqualification could not be considered as final and executory as to them. Furthermore, even assuming arguendo the May 6, 2010 Notice was valid, the judgment would attain finality only after five-days from receipt thereof. Nevertheless, whether it was received on May 7 or May 13, the judgment on Ramon Talaga’s disqualification became final and executory after the May 10, 2010 Elections.

Considering further that Ramon Talaga’s disqualification became final after the May 10, 2010 Elections, it was only during that time that office of the Mayor of Lucena City became vacant. Since there is no question that Ramon’s disqualification to serve as City Mayor is permanent in character, the incumbent Vice-Mayor should serve as Mayor pursuant to Section 44 of the Local Government Code, which provides:

Section 44. Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor. - If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor.

x x x x

For purposes of this Chapter, a permanent vacancy arises when an elective local official fills a higher vacant

office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.

x x x x (Emphasis supplied)

In view of the foregoing, I concur with the ponencia of Justice Lucas P. Bersamin that it is the incumbent Vice-Mayor, Roderick Alcala, who should be the Mayor of Lucena City.

[1] Batas Pambansa Bilang 881, Section 77, Candidates in case of death, disqualification or withdrawal of another. - If after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified. x x x

[2] Part V, Title B, Rule 23 of the Comelec Rules of Procedure.

[3] Rollo, p. 132.

CONCURRING AND DISSENTING OPINION

BRION, J.:

I concur with the ponencia in dismissing Mayor Barbara Ruby Talaga's petition against the assailed Commission on Elections (COMELEC) en banc Resolution of May 20, 2011 in SPC No. 10-024; but I dissent with the ponencia's reasoning that the cause of invalidity of Ruby's substitution of Ramon Talaga is the cancellation of Ramon's certificate of candidacy (CoC). I dissent, too, with the ponencia's ruling that it is the Vice-Mayor who should be seated as Mayor, applying the rules of succession under the Local Government Code (LGC).

Ramon and Philip Castillo were the original candidates for the mayoralty post in Lucena City for the May 10, 2010 elections.[1] Soon after they filed their CoCs, Castillo filed a petition to "deny due course to or to cancel the certificate of candidacy" of Ramon on the ground that he had served for three consecutive terms as mayor.[2]

Ramon defended himself by citing the then COMELEC ruling that his preventive suspension in the course of his three terms as mayor prevented him from serving continuously.[3] On December 23, 2009, however, the Supreme Court issued a contrary ruling in *Aldovino, Jr. v. Commission on Elections*[4] and held that preventive suspension is only a temporary incapacity that does not interrupt a local official's term of office for purposes of the three-term limit rule.

In light of this development, Ramon manifested before the COMELEC that he made no misrepresentation in his CoC because of the prevailing COMELEC ruling; he acknowledged that he was disqualified to run for mayor, and he prayed for a ruling declaring him disqualified.[5]

The requested ruling came on April 19, 2010, through the grant of Castillo's petition by the COMELEC First Division.[6] Ramon responded to the ruling by filing a motion for reconsideration,[7] but he withdrew his motion on May 4, 2010 through an ex parte manifestation of withdrawal.[8] Later, on the same day, Ruby – Ramon's wife – filed her CoC, attaching thereto the required Certificate of Nomination by Ramon's party.[9]

The COMELEC en banc's action on Ramon's manifestation of withdrawal did not come until the next day – May 5, 2010. The en banc, in its Order, considered the April 19, 2010 Resolution of the COMELEC First Division

final and executory.[10]

On election day, May 10, 2010, Ramon's name remained in the printed ballot, but votes for him were counted in Ruby's favor as votes for the substitute candidate.[11]

Castillo sought to suspend the proclamation of Ramon or Ruby who had garnered 44,099 votes as against Castillo's 39,615.[12] On May 13, 2010, the COMELEC gave due course to Ruby's CoC as substitute candidate.[13] The Board of Canvassers, on the other hand, did not suspend the proclamation as Castillo had requested, and instead proclaimed Ruby as winner and elected Mayor of Lucena City on that same day.[14]

Castillo sought to annul Ruby's proclamation through another petition[15] while the elected Vice Mayor, Roderick Alcala, moved to intervene in Castillo's petition.[16] On January 11, 2011, the COMELEC Second Division dismissed Castillo's petition and denied Alcala's motion. The COMELEC Second Division reasoned out that the substitution became final and executory when Castillo failed to act after receiving a copy of the COMELEC resolution giving due course to Ruby's substitution.[17]

Both parties went to the COMELEC en banc for the reconsideration of the COMELEC Second Division's ruling. The COMELEC en banc reversed the January 11, 2011 ruling of the COMELEC Second Division on due process consideration and on the ground that the filing of Ruby's CoC was not a proper substitution for being premature and for being filed out of time.[18] Against this COMELEC en banc ruling, both parties went to the Court.

The issues raised by the parties before the Court can be condensed as follows:

- Whether Ruby validly substituted for Ramon as candidate for mayor of Lucena City;
- In the negative, whether the cause of the invalidity of the substitution is Ramon's disqualification or the cancellation of his CoC;
- Who between Castillo and Alcala should assume the position of mayor of Lucena City?

The ponencia dismissed Ruby's petition (G.R. No. 196804) and Castillo's petition (G.R. No. 197015) for lack of merit; and upheld the COMELEC en banc's resolution of May 20, 2011 in SPC No. 10-024.

I agree with the ponencia's conclusion that Ruby never validly substituted Ramon, and, therefore, she never became a candidate who can be validly voted for in the May 2010 elections. The ponencia considers Ruby's substitution as invalid because Ramon's CoC contains an "incurable defect consisting in his false declaration of his eligibility to run"[19] for a fourth consecutive term. The ponencia adds that despite the absence of an express finding of material misrepresentation by the COMELEC, the fact that it granted Castillo's petition "without express qualifications"[20] manifested that the COMELEC had cancelled Ramon's CoC. In short, the ponencia considers the CoC of a three-term candidate as invalid, warranting its cancellation.

I dissent with the reasoning of the ponencia. I base my position of dissent on the following grounds – the same grounds which would later support my position that it is Castillo who should be seated as Mayor -

- the violation of the three-term limit rule is a unique but proper ground for disqualification and not for the cancellation of a CoC under Section 78 of the Omnibus Election Code (OEC);
- the petition filed by Castillo against Ramon was based on the three-term limit rule and, hence, was a petition for disqualification, but no effective disqualification ever took place since Ramon never qualified to serve for a fourth term; and
- since Ruby did not validly substitute Ramon and Ramon opted to exit out of the election race (although through an erroneous mode of asking for a ruling disqualifying him), neither of the two can be considered candidates and

the votes cast in their favor should be considered stray; thus, Castillo should be proclaimed as Mayor of Lucena City.

Hidden behind but not erased by this simplistic recital of the issues, rulings and dissent is the legal reality that these cases pose issues way beyond the question of substitution that appears on the surface. They require a look into the nature of a CoC; distinctions between eligibility, or lack of it, and disqualification; the effects of cancellation and disqualification; the applicable remedies; and the unique nature and the effect of the constitutional three-term limit for local elective officials.

The CoC and the Qualifications for its Filing.

A basic rule and one that cannot be repeated often enough is that the CoC is the document that creates the status of a candidate. In *Sinaca v. Mula*,^[21] the Court described the nature of a CoC as follows –

A certificate of candidacy is in the nature of a formal manifestation to the whole world of the candidate's political creed or lack of political creed. It is a statement of a person seeking to run for a public office certifying that he announces his candidacy for the office mentioned and that he is eligible for the office, the name of the political party to which he belongs, if he belongs to any, and his post-office address for all election purposes being as well stated.

Both the 1973 and 1987 Constitutions left to Congress the task of providing the qualifications of local elective officials. Congress undertook this task by enacting *Batas Pambasa Bilang (B.P. Blg.) 337 (LGC)*, the OEC and, later, *Republic Act (R.A.) No. 7160 (Local Government Code of 1991 or LGC 1991)*.^[22]

Under Section 79 of the OEC, a political aspirant legally becomes a “candidate” only upon the due filing of his sworn CoC.^[23] In fact, Section 73 of the OEC makes the filing of the CoC a condition sine qua non for a person to “be eligible for any elective public office”^[24] – i.e., to be validly voted for in the elections. Section 76 of the OEC makes it a “ministerial duty” for a COMELEC official “to receive and acknowledge receipt of the certificate of candidacy”^[25] filed.

COMELEC Resolution No. 8678 provides what a CoC must contain or state:^[26]

Section 2. Contents of certificate of candidacy. - The certificate of candidacy shall be under oath and shall state that the person filing it is announcing his candidacy for the office and constituency stated therein; that he is eligible for said office, his age, sex, civil status, place and date of birth, his citizenship, whether natural-born or naturalized; the registered political party to which he belongs; if married, the full name of the spouse; his legal residence, giving the exact address, the precinct number, barangay, city or municipality and province where he is registered voter; his post office address for election purposes; his profession or occupation or employment; that he is not a permanent resident or an immigrant to a foreign country; that he will support and defend the Constitution of the Republic of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, decrees, resolution, rules and regulations promulgated and issued by the duly-constituted authorities; that he assumes the foregoing obligations voluntarily without mental reservation or purpose of evasion; and that the facts stated in the certificate are true and correct to the best of his own knowledge. *[italics supplied]*

From the point of view of the common citizen who wants to run for a local elective office, the above recital contains all the requirements that he must satisfy; it contains the basic and essential requirements applicable to all citizens to qualify for candidacy for a local elective office. These are their formal terms of entry to local politics. A citizen must not only possess all these requirements; he must positively represent in his CoC application that he possesses them. Any falsity on these requirements constitutes a material misrepresentation that can lead to the cancellation of the CoC. On this point, Section 78 of the OEC 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. [italics, emphases and underscores ours]

A necessarily related provision is Section 39 of LGC 1991 which states:

Sec. 39. Qualifications. – (a) An elective local official must be a citizen of the Philippines; a registered voter in the barangay, municipality, city, or province or, in the case of a member of the sangguniang panlalawigan, sangguniang panlungsod, or sanggunian bayan, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.

x x x x

(c) Candidates for the position of Mayor or vice-mayor of independent component cities, component cities, or municipalities must be at least twenty-one (21) years of age on election day. [italics ours]

Notably, Section 74 of the OEC does not require any negative qualification except only as expressly required therein. A specific negative requirement refers to the representation that the would-be candidate is not a permanent resident nor an immigrant in another country. This requirement, however, is in fact simply part of the positive requirement of residency in the locality for which the CoC is filed and, in this sense, it is not strictly a negative requirement. Neither does Section 74 require any statement that the would-be candidate does not possess any ground for disqualification specifically enumerated by law, as disqualification is a matter that the OEC and LGC 1991 separately deal with, as discussed below. Notably, Section 74 does not require a would-be candidate to state that he has not served for three consecutive terms in the same elective position immediately prior to the present elections.

With the accomplishment of the CoC and its filing, a political aspirant officially acquires the status of a candidate and, at the very least, the prospect of holding public office; he, too, formally opens himself up to the complex political environment and processes. The Court cannot be more emphatic in holding “that the importance of a valid certificate of candidacy rests at the very core of the electoral process.”[27]

Pertinent laws[28] provide the specific periods when a CoC may be filed; when a petition for its cancellation may be brought; and the effect of its filing. These measures, among others, are in line with the State policy or objective of ensuring “equal access to opportunities for public service,”[29] bearing in mind that the limitations on the privilege to seek public office are within the plenary power of Congress to provide.[30]

The Concept of Disqualification and its Effects.

To disqualify, in its simplest sense, is (1) to deprive a person of a power, right or privilege; or (2) to make him or her ineligible for further competition because of violation of the rules.[31] It is in these senses that the term is understood in our election laws.

Thus, anyone who may qualify or may have qualified under the general rules of eligibility applicable to all citizens may be deprived of the right to be a candidate or may lose the right to be a candidate (if he has filed his CoC) because of a trait or characteristic that applies to him or an act that can be imputed to him as an individual, separately from the general qualifications that must exist for a citizen to run for a local public office. Notably, the breach of the three-term limit is a trait or condition that can possibly apply only to those who have previously

served for three consecutive terms in the same position sought immediately prior to the present elections.

In a disqualification situation, the grounds are the individual traits or conditions of, or the individual acts of disqualification committed by, a candidate as provided under Sections 68 and 12 of the OEC and Section 40 of LGC 1991, and which generally have nothing to do with the eligibility requirements for the filing of a CoC.[32]

Sections 68 and 12 of the OEC (together with Section 40 of LGC 1991, outlined below) cover the following as traits, characteristics or acts of disqualification: (i) corrupting voters or election officials; (ii) committing acts of terrorism to enhance candidacy; (iii) overspending; (iv) soliciting, receiving or making prohibited contributions; (v) campaigning outside the campaign period; (vi) removal, destruction or defacement of lawful election propaganda; (vii) committing prohibited forms of election propaganda; (viii) violating rules and regulations on election propaganda through mass media; (ix) coercion of subordinates; (x) threats, intimidation, terrorism, use of fraudulent device or other forms of coercion; (xi) unlawful electioneering; (xii) release, disbursement or expenditure of public funds; (xiii) solicitation of votes or undertaking any propaganda on the day of the election; (xiv) declaration as an insane; and (xv) committing subversion, insurrection, rebellion or any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude.

Section 40 of LGC 1991, on the other hand, essentially repeats those already in the OEC under the following disqualifications:

- Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;
- Those removed from office as a result of an administrative case;
- Those convicted by final judgment for violating the oath of allegiance to the Republic;
- Those with dual citizenship;
- Fugitives from justice in criminal or non-political cases here or abroad;
- Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and
- The insane or feeble-minded.

Together, these provisions embody the disqualifications that, by statute, can be imputed against a candidate or a local elected official to deny him of the chance to run for office or of the chance to serve if he has been elected.

A unique feature of “disqualification” is that under Section 68 of the OEC, it refers only to a “candidate,” not to one who is not yet a candidate. Thus, the grounds for disqualification do not apply to a would-be candidate who is still at the point of filing his CoC. This is the reason why no representation is required in the CoC that the would-be candidate does not possess any ground for disqualification. The time to hold a person accountable for the grounds for disqualification is after attaining the status of a candidate, with the filing of the CoC.

To sum up and reiterate the essential differences between the eligibility requirements and disqualifications, the former are the requirements that apply to, and must be complied by, all citizens who wish to run for local elective office; these must be positively asserted in the CoC. The latter refer to individual traits, conditions or acts that serve as grounds against one who has qualified as a candidate to lose this status or privilege; essentially, they have nothing to do with a candidate’s CoC.

When the law allows the cancellation of a candidate’s CoC, the law considers the cancellation from the point of view of the requirements that every citizen who wishes to run for office must commonly satisfy. Since the

elements of “eligibility” are common, the vice of ineligibility attaches to and affects both the candidate and his CoC. In contrast, when the law allows the disqualification of a candidate, the law looks only at the disqualifying trait or condition specific to the individual; if the “eligibility” requirements have been satisfied, the disqualification applies only to the person of the candidate, leaving the CoC valid. A previous conviction of subversion is the best example as it applies not to the citizenry at large, but only to the convicted individuals; a convict may have a valid CoC upon satisfying the eligibility requirements under Section 74 of the OEC, but shall nevertheless be disqualified.

Distinctions among (i) denying due course to or cancellation of a CoC, (ii) disqualification, and (iii) quo warranto

The nature of the eligibility requirements for a local elective office and the disqualifications that may apply to candidates necessarily create distinctions on the remedies available, on the effects of lack of eligibility and on the application of disqualification. The remedies available are essentially: the cancellation of a CoC, disqualification from candidacy or from holding office, and quo warranto, which are distinct remedies with varying applicability and effects. For ease of presentation and understanding, their availability, grounds and effects are topically discussed below.

As to the grounds:

In the denial of due course to or cancellation of a CoC, the ground is essentially lack of eligibility under the pertinent constitutional and statutory provisions on qualifications or eligibility for public office;[33] the governing provisions are Sections 78 and 69 of the OEC.[34]

In a disqualification case, as mentioned above, the grounds are traits, characteristics or acts of disqualification,[35] individually applicable to a candidate, as provided under Sections 68 and 12 of the OEC; Section 40 of LGC 1991; and, as discussed below, Section 8, Article X of the Constitution. As previously discussed, the grounds for disqualification are different from, and have nothing to do with, a candidate’s CoC although they may result in disqualification from candidacy whose immediate effect upon finality before the elections is the same as a cancellation. If they are cited in a petition filed before the elections, they remain as disqualification grounds and carry effects that are distinctly peculiar to disqualification.

In a quo warranto petition, the grounds to oust an elected official from his office are ineligibility and disloyalty to the Republic of the Philippines. This is provided under Section 253 of the OEC and governed by the Rules of Court as to the procedures. While quo warranto and cancellation share the same ineligibility grounds, they differ as to the time these grounds are cited. A cancellation case is brought before the elections, while a quo warranto is filed after and may still be filed even if a CoC cancellation case was not filed before elections, viz.:

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.[36]

Note that the question of what would constitute acts of disqualification – under Sections 68 and 12 of the OEC and Section 40 of LGC 1991 – is best resolved by directly referring to the provisions involved. On the other hand, what constitutes a violation of the three-term limit rule under the Constitution has been clarified in our case

law.[37] The approach is not as straight forward in a petition to deny due course to or cancel a CoC and also to a quo warranto petition, which similarly covers the ineligibility of a candidate/elected official. In *Salcedo II v. COMELEC*,[38] we ruled that –

[I]n order to justify the cancellation of the certificate of candidacy under Section 78, 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 has interpreted this phrase in a line of decisions applying Section 78 of the Code.

x x x x

Therefore, it may be concluded that the material misrepresentation contemplated by Section 78 of the Code refer to qualifications for elective office. This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation in his certificate of candidacy are grave — to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. It could not have been the intention of the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake. [emphases ours, citation omitted]

Thus, in addition to the failure to satisfy or comply with the eligibility requirements, a material misrepresentation must be present in a cancellation of CoC situation. The law apparently does not allow material divergence from the listed requirements to qualify for candidacy and enforces its edict by requiring positive representation of compliance under oath. Significantly, where disqualification is involved, the mere existence of a ground appears sufficient and a material representation assumes no relevance.

As to the period for filing:

The period to file a petition to deny due course to or cancel a CoC depends on the provision of law invoked. If the petition is filed under Section 78 of the OEC, the petition must be filed within twenty-five (25) days from the filing of the CoC.[39] However, if the petition is brought under Section 69 of the same law, the petition must be filed within five (5) days from the last day of filing the CoC.[40]

On the other hand, the period to file a disqualification case is at any time before the proclamation of a winning candidate, as provided in COMELEC Resolution No. 8696.[41] The three-term limit disqualification, because of its unique characteristics, does not strictly follow this time limitation and is discussed at length below. At the very least, it should follow the temporal limitations of a quo warranto petition which must be filed within ten (10) days from proclamation.[42] The constitutional nature of the violation, however, argues against the application of this time requirement; the rationale for the rule and the role of the Constitution in the country's legal order dictate that a petition should be allowed while a consecutive fourth-term is in office.

As to the effects of a successful suit:

A candidate whose CoC was denied due course or cancelled is not considered a candidate at all. Note that the law fixes the period within which a CoC may be filed.[43] After this period, generally no other person may join the election contest. A notable exception to this general rule is the rule on substitution: when an official candidate of a registered political party dies, withdraws or is disqualified for any cause after the last day for filing a CoC, the law allows the substitution of the dead, withdrawing or disqualified candidate, provided that he or she had a valid and subsisting CoC at the time of death, withdrawal or substitution. This proviso is necessary since the entry of a new candidate after the regular period for filing the CoC is exceptional. Unavoidably, a "candidate" whose CoC has

been cancelled or denied due course cannot be substituted for lack of a CoC, to all intents and purposes.[44] Similarly, a successful quo warranto suit results in the ouster of an already elected official from office; substitution, for obvious reasons, can no longer apply.

On the other hand, a candidate who was simply disqualified is merely prohibited from continuing as a candidate or from assuming or continuing to assume the functions of the office;[45] substitution can thus take place before election under the terms of Section 77 of the OEC.[46] However, a three-term candidate with a valid and subsisting CoC cannot be substituted if the basis of the substitution is his disqualification on account of his three-term limitation. Disqualification that is based on a breach of the three-term limit rule cannot be invoked as this disqualification can only take place after election where the three-term official emerged as winner. As in a quo warranto, any substitution is too late at this point.

As to the effects of a successful suit on the right of the second placer in the elections:

In any of these three remedies, the doctrine of rejection of the second placer applies for the simple reason that –

To simplistically assume that the second placer would have received the other votes would be to substitute our judgment for the mind of the voter. The second placer is just that, a second placer. He lost the elections. He was repudiated by either a majority or plurality of voters. He could not be considered the first among qualified candidates because in a field which excludes the disqualified candidate, the conditions would have substantially changed. We are not prepared to extrapolate the results under such circumstances.[47]

With the disqualification of the winning candidate and the application of the doctrine of rejection of the second placer, the rules on succession under the law accordingly apply.

As an exceptional situation, however, the candidate with the second highest number of votes (second placer) may be validly proclaimed as the winner in the elections should the winning candidate be disqualified by final judgment before the elections, as clearly provided in Section 6 of R.A. No. 6646.[48] The same effect obtains when the electorate is fully aware, in fact and in law and within the realm of notoriety, of the disqualification, yet they still voted for the disqualified candidate. In this situation, the electorate that cast the plurality of votes in favor of the notoriously disqualified candidate is simply deemed to have waived their right to vote.[49]

In a CoC cancellation proceeding, the law is silent on the legal effect of a judgment cancelling the CoC and does not also provide any temporal distinction. Given, however, the formal initiatory role a CoC plays and the standing it gives to a political aspirant, the cancellation of the CoC based on a finding of its invalidity effectively results in a vote for an inexistent “candidate” or for one who is deemed not to be in the ballot. Although legally a misnomer, the “second placer” should be proclaimed the winner as the candidate with the highest number of votes for the contested position. This same consequence should result if the cancellation case becomes final after elections, as the cancellation signifies non-candidacy from the very start, i.e., from before the elections.

Violation of the three-term limit rule

a. The Three-Term Limit Rule.

The three-term limit rule is a creation of Section 8, Article X of the Constitution. This provision fixes the maximum limit an elective local official can consecutively serve in office, and at the same time gives the command, in no uncertain terms, that no such official shall serve for more than three consecutive terms. Thus, a three-term local official is barred from serving a fourth and subsequent consecutive terms.

This bar, as a constitutional provision, must necessarily be read into and interpreted as a component part of the

OEC under the legal reality that neither this Code nor the LGC provides for the three-term limit rule's operational details; it is not referred to as a ground for the cancellation of a CoC nor for the disqualification of a candidate, much less are its effects provided for. Thus, the need to fully consider, reconcile and harmonize the terms and effects of this rule on elections in general and, in particular, on the circumstances of the present case.

b. Is the Rule an Eligibility Requirement or a Disqualification?

In practical terms, the question of whether the three-term limit rule is a matter of "eligibility" that must be considered in the filing of a CoC translates to the need to state in a would-be candidate's CoC application that he is eligible for candidacy because he has not served for three consecutive terms immediately before filing his application.

The wording of Section 8, Article X of the Constitution, however, does not justify this requirement as Section 8 simply sets a limit on the number of consecutive terms an official can serve. It does not refer to elections, much less does it bar a three-termers' candidacy. As previously discussed, Section 74 of the OEC does not expressly require a candidate to assert the non-possession of any disqualifying trait or condition, much less of a candidate's observance of the three-term limit rule. In fact, the assertion of a would-be candidate's eligibility, as required by the OEC, could not have contemplated making a three-term candidate ineligible for candidacy since that disqualifying trait began to exist only later under the 1987 Constitution.

What Section 8, Article X of the Constitution indisputably mandates is solely a bar against serving for a fourth consecutive term, not a bar against candidacy. Of course, between the filing of a CoC (that gives an applicant the status of a candidate) and assumption to office as an election winner is a wide expanse of election activities whose various stages our election laws treat in various different ways. Thus, if candidacy will be aborted from the very start (i.e., at the initial CoC-filing stage), what effectively takes place – granting that the third-termers possesses all the eligibility elements required by law – is a shortcut that is undertaken on the theory that the candidate cannot serve in any way if he wins a fourth term.

I submit that while simple and efficient, essential legal considerations should dissuade the Court from using this approach. To make this shortcut is to incorporate into the law, by judicial fiat, a requirement that is not expressly there. In other words, such shortcut may go beyond allowable interpretation that the Court can undertake, and cross over into prohibited judicial legislation. Not to so hold, on the other hand, does not violate the three-term limit rule even in spirit, since its clear and undisputed mandate is to disallow serving for a fourth consecutive term; this objective is achieved when the local official does not win and can always be attained by the direct application of the law if he does win.

Another reason, and an equally weighty one, is that a shortcut would run counter to the concept of commonality that characterizes the eligibility requirements; it would allow the introduction of an element that does not apply to all citizens as an entry qualification. Viewed from the prism of the general distinctions between eligibility and disqualification discussed above, the three-term limit is unavoidably a restriction that applies only to local officials who have served for three consecutive terms, not to all would-be candidates at large; it applies only to specific individuals who may have otherwise been eligible were it not for the three-term limit rule and is thus a defect that attaches only to the candidate and not to his CoC. In this sense, it cannot but be a disqualification and at that, a very specific one.

That the prohibited fourth consecutive term can only take place after a three-term local official wins his fourth term signifies too that the prohibition (and the resulting disqualification) only takes place after elections. This circumstance, to my mind, supports the view that the three-term limit rule does not at all involve itself with the

matter of candidacy; it only regulates service beyond the limits the Constitution has set. Indeed, it is a big extrapolative leap for a prohibition that applies after election, to hark back and affect the initial election process for the filing of CoCs.

Thus, on the whole, I submit that the legally sound view is not to bar a three-termers' candidacy for a fourth term if the three-term limit rule is the only reason for the bar. In these lights, the three-term limit rule – as a bar against a fourth consecutive term – is effectively a disqualification against such service rather than an eligibility requirement.[50]

c. Filing of Petition and Effects.

As a disqualification that can only be triggered after the elections, it is not one that can be implemented or given effect before such time. The reason is obvious; before that time, the gateway to the 4th consecutive term has not been opened because the four-term re-electionist has not won. This reality brings into sharp focus the timing of the filing of a petition for disqualification for breach of the three-term limit rule. Should a petition under the three-term limit rule be allowed only after the four-term official has won on the theory that it is at that point that the Constitution demands a bar?

The timing of the filing of the petition for disqualification is a matter of procedure that primarily rests with the COMELEC. Of course, a petition for disqualification cannot be filed against one who is not yet a candidate as only candidates (and winners) can be disqualified. Hence, the filing should be done after the filing of the CoC. On the backend limitation of its filing, I believe that the petition does not need to be hobbled by the terms of COMELEC Resolution No. 8696[51] because of the special nature and characteristics of the three-term limit rule – i.e., the constitutional breach involved; the fact that it can be effective only after a candidate has won the election; and the lack of specific provision of the election laws covering it.

To be sure, a constitutional breach cannot be allowed to remain unattended because of the procedures laid down by administrative bodies. While Salcedo considers the remedy of quo warranto as almost the same as the remedy of cancellation on the question of eligibility, the fact that the remedies can be availed of only at particular periods of the election process signifies more than temporal distinction.

From the point of view of eligibility, one who merely seeks to hold public office through a valid candidacy cannot wholly be treated in the same manner as one who has won and is at the point of assuming or serving the office to which he has been elected; the requirements to be eligible as a candidate are defined by the election laws and by the local government code, but beyond these are constitutional restrictions on eligibility to serve. The three-term limit rule serves as the best example of this fine distinction; a local official who is allowed to be a candidate under our statutes but who is effectively in his fourth term should be considered ineligible to serve if the Court were to give life to the constitutional provision, couched in a strong prohibitory language, that “no such official shall serve for more than three consecutive terms.”

A possible legal stumbling block in allowing the filing of the petition before the election is the lack of a cause of action or prematurity at that point. If disqualification is triggered only after a three-termers has won, then it may be argued with some strength that a petition, filed against a respondent three-term local official before he has won a fourth time, has not violated any law and does not give the petitioner the right to file a petition for lack of cause of action or prematurity.[52]

I take the view, however, that the petition does not need to be immediately acted upon and can merely be docketed as a cautionary petition reserved for future action if and when the three-term local official wins a fourth consecutive term. If the parties proceed to litigate without raising the prematurity or lack of cause of action as

objection, a ruling can be deferred until after the cause of action accrues; if a ruling is entered, then any decreed disqualification cannot be given effect and implemented until a violation of the three-term limit rule occurs.

As a last point on the matter of substitution, a candidate with a valid and subsisting CoC can only be validly substituted on the basis of a withdrawal before the elections, or by reason of death. Disqualification that is based on a breach of the three-term limit rule cannot be invoked as this disqualification can only take place after election. As in a quo warranto situation, any substitution is too late at this point.

I shall consider the case on the basis of these positions.

Castillo's Petition is Properly a
Petition for Disqualification against
Ramon for Possessing some Grounds
for Disqualification

On the basis of my views on the effect of the three-term limit rule, I disagree with the ponencia's conclusion that Castillo's petition is one for the cancellation or denial of due course of Ramon's CoC. I likewise so conclude after examining Castillo's petition, its allegations and the grounds it invoked.

As a rule, the nature of the action is determined by the allegations in the complaint or petition. The cause of action is not what the title or designation of the petition states; the acts defined or described in the body of the petition control. The designation or caption and even the prayer, while they may assist and contribute their persuasive effect, cannot also be determinative of the nature or cause of action for they are not even indispensable parts of the petition.[53]

In this sense, any question on the nature of Castillo's petition against Ramon cannot ignore the pertinent allegations of the petition, and they state:

4. Respondent was successively elected mayor of Lucena City in 2001, 2004, and 2007 local elections based on the records of the Commission on Elections of Lucena City and had fully served the aforesaid three (3) terms without any voluntary and involuntary interruption.

x x x x

7. Respondent, knowing well that he was elected for and had fully served three (3) consecutive terms as a city mayor of Lucena, he still filed his Certificate of Candidacy for City Mayor of Lucena for this coming 10 May 2010 national and local elections;

x x x x

8. Under the Constitution and existing Election laws, New Local Government Code of the Philippines, and jurisprudence the respondent is no longer entitled and is already disqualified to be a city mayor for the fourth consecutive term[.] [emphasis supplied]

These allegations, on their face, did not raise any of the specified grounds for cancellation or denial of due course of a CoC under Sections 69 and 78 of the OEC. Specifically, Castillo's petition did not allege that Ramon was a nuisance candidate or that he had committed a misrepresentation on a material fact in his CoC; the petition failed to allege any deliberate attempt, through material misrepresentation, to mislead, misinform or deceive the electorate of Lucena City as to Ramon's qualifications for the position of Mayor. More importantly, and as previously discussed, the non-possession of any disqualifying ground, much less of a potential breach of the three-term limit rule, is not among the matters of qualification or eligibility that a candidate is required to assert in his CoC.

Castillo's allegations simply articulate the fact that Ramon had served for three consecutive terms and the legal conclusion that the three-term limit rule under the Constitution and LGC 1991 disqualifies him from running for a fourth consecutive term. Under these allegations, Castillo's petition cannot come within the purview of Section 78 of the OEC; Ramon's status as a three-term candidate is a ground to disqualify him (as precautionary measure before elections) for possessing a ground for disqualification under the Constitution and the LGC, specifically, for running for the same office after having served for three continuous terms.

From the given facts and from the standards of strict legality based on my discussions above, I conclude that the COMELEC was substantially correct in treating the case as one for disqualification – that is, without cancelling his CoC - in its April 19, 2010 Resolution and in ruling for disqualification, subject to my reservation about prematurity and the existence of a ripe cause of action. This reservation gathers strength in my mind as I consider that most of the developments in the case took place before the May 10, 2010 elections under the standards of Section 8, Article X of the Constitution. Brought to its logical end, this consideration leads me to conclude that while the COMELEC might have declared Ramon's disqualification to be final, its declaration was ineffectual as no disqualification actually ever took effect. None could have taken place as the case it ruled upon was not ripe for a finding of disqualification; Ramon, although a three-term local official, had not won a fourth consecutive term and, in fact, could not have won because he gave way to his wife in a manner not amounting to a withdrawal.

Ruby's Substitution of Ramon is
Invalid not because Ramon's CoC
was cancelled but because of its non-
conformity with the Conditions
Required by Section 77 of the OEC

As a rule, a CoC must be filed only within the timelines specified by law. This temporal limitation is a mandatory requirement to qualify as a candidate in a national or local election.[54] It is only when a candidate with a valid and subsisting CoC is disqualified, dies or withdraws his or her CoC before the elections that the remedy of substitution under Section 77 of the OEC is allowed. Section 77 states:

Section 77. Candidates in case of death, disqualification or withdrawal of another. - If after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified. The substitute candidate nominated by the political party concerned may file his certificate of candidacy for the office affected in accordance with the preceding sections not later than mid-day of the day of the election. If the death, withdrawal or disqualification should occur between the day before the election and mid-day of election day, said certificate may be filed with any board of election inspectors in the political subdivision where he is a candidate, or, in the case of candidates to be voted for by the entire electorate of the country, with the Commission. [italics supplied, emphasis and underscoring ours]

In the present case, the grounds that would give rise to the substitution had to be present for Ruby's substitution to be valid. Specifically, she had to show that either Ramon had died, had withdrawn his valid and subsisting CoC, or had been disqualified for any cause. All these are best determined by considering the antecedents of the present case. To recall:

- On April 19, 2010, the Comelec First Division disqualified Ramon in SPA No. 09-929 (DC). The Resolution did not contain any order to deny due course or to cancel Ramon's CoC;
- On April 21, 2010, Ramon filed a Verified Motion for Reconsideration seeking a reversal of the April 19, 2010 Resolution;

- On May 4, 2010, at exactly 9:00 a.m., Ramon filed an Ex-Parte Manifestation of the Pending Motion for Reconsideration dated May 3, 2010 praying that the COMELEC issue an “Order to NOTE the instant Manifestation and DEEM the Resolution promulgated on April 19, 2010 as final and executory”;
- On the same day at 4:30, Ruby filed her CoC for Mayor of Lucena City in substitution of her husband, Ramon;
- In an Order dated May 5, 2010, the COMELEC en banc issued an Order in response to Ramon’s Manifestation which stated: “(a) To NOTE this instant Manifestation; and (b) To consider the April 19, 2010 Resolution of the Commission First Division final and executory”;
- On the May 10, 2010 elections, Ramon garnered the highest number of votes with 44,099 votes, while Castillo garnered only 39, 615 votes;
- Three days after the elections or on May 13, 2010, the COMELEC en banc issued Resolution No. 8917 that gave due course to Ruby’s CoC. This Resolution was premised on the Memorandum of the Law Department dated May 8, 2010 which erroneously stated that Ruby filed her CoC on May 5 not May 4, 2010; and
- On the basis of Resolution No. 8917, the City Board of Canvassers proclaimed Ruby as the duly elected mayor of Lucena City.[55]

All these, of course, will have to be viewed from the prism of the three-term limit rule.

Substitution refers to an exceptional situation in an election scenario where the law leans backwards to allow a registered party to put in place a replacement candidate when the death, withdrawal or disqualification of its original candidate occurs. The question that arises under the bare provisions of Section 77 of the OEC is how the COMELEC should handle the law’s given conditions and appreciate the validity of a substitution. The approaches to be made may vary on a case-to-case basis depending on the attendant facts, but a failsafe method in an election situation is to give premium consideration not to the candidates or their parties, but to the electorate’s process of choice and the integrity of the elections. In other words, in a legal or factual equipoise situation, the conclusion must lean towards the integrity of the electoral process.

Death as basis for substitution obviously does not need to be considered, thus leaving withdrawal and disqualification as grounds for the validity of Ruby’s substitution.

On the matter of withdrawal, two significant developments could possibly serve as indicators of withdrawal and should be examined for their legal effects.

The first development relates to the aftermath of the Court’s ruling in *Aldovino* regarding the interruption of service for purposes of the three-term limit rule. Although the *Aldovino* ruling still had to lapse to finality, Ramon almost immediately manifested before the COMELEC First Division his recognition that he was disqualified and asked for a ruling. The requested ruling, of course, was on the case that Castillo had filed. This ruling did not come until April 19, 2010 when the COMELEC First Division granted Castillo’s petition, to which Ramon responded with a verified motion for reconsideration.

A significant aspect (although a negative one) of this development is that Ramon never indicated his clear intention to withdraw his CoC. Despite the *Aldovino* ruling, he only manifested his recognition that he was disqualified and had asked for a ruling on Castillo’s petition. To be sure, he could have made a unilateral withdrawal with or without any intervention from the COMELEC First Division. The reality, however, was that he did not; he did not withdraw either from his disqualification case nor his CoC, pursuant to Section 73 of the OEC; he opted and continued to act within the confines of the pending case.

A question that may possibly be asked is whether Ramon’s Manifestation recognizing his disqualification can be

considered a withdrawal. The short answer, in my view, is that it cannot be so considered. Withdrawal and disqualification are separate grounds for substitution under Section 77 of the OEC and one should not be confused with the other. Recognition of disqualification, too, without more, cannot be considered a withdrawal. Disqualification results from compulsion of law while withdrawal is largely an act that springs from the candidate's own volition. Ramon's obvious submission to the COMELEC First Division, by asking for a ruling, cannot in any sense be considered a withdrawal.

The second occasion was in early May 2010 when he withdrew, through a Manifestation, his motion for reconsideration of the First Division's ruling finding him disqualified for violation of the three-term limit rule. To recall, he made his ex parte manifestation of withdrawal in the morning of May 4, 2010, while his wife filed her CoC in substitution in the afternoon of the same day, on the apparent theory that his acceptance of the First Division disqualification ruling qualified her for substitution under Section 77 of the OEC.

I cannot view these moves as indicative of withdrawal because the parties' main basis, as shown by their moves, was to take advantage of a final ruling decreeing disqualification as basis for Ruby's substitution. Plainly, no withdrawal of the CoC was ever made and no withdrawal was also ever intended as they focused purely on the effects of Ramon's disqualification. This intent is evident from their frantic efforts to secure a final ruling by the COMELEC en banc on Ramon's disqualification.

But neither can I recognize that there was an effective disqualification that could have been the basis for a Section 77 substitution. As repeatedly discussed above, the constitutional prohibition and the disqualification can only set in after election, when a three-term local official has won for himself a fourth term. Quite obviously, Ramon – without realizing the exact implications of the three-term limit rule – opted for a disqualification as his mode of exit from the political scene. This is an unfortunate choice as he could not have been disqualified (or strictly, his disqualification could not have taken effect) until after he had won as Mayor in the May 2010 elections – too late in time if the intention was to secure a substitution for Ruby. Additionally, there was no way that Ramon could have won as he had opted out of the race, through his acceptance of an ineffectual disqualification ruling, in favor of his wife, Ruby. I hark back, too, to the reason I have given on why the constitutional three-term limit rule cannot affect, and does not look back to, the candidate's CoC which should remain valid if all the elements of eligibility are otherwise satisfied.

Whatever twists and turns the case underwent through the series of moves that Ramon and his wife made after the First Division's April 19, 2010 ruling cannot erase the legal reality that, at these various points, no disqualification had ripened and became effective. To repeat, the cause for disqualification is the election of the disqualified candidate to a fourth term – a development that never took place. Without a disqualified candidate that Ruby was replacing, no substitution pursuant to Section 77 of the OEC could have taken place.[56] This reality removes the last ground that would have given Ruby the valid opportunity to be her husband's substitute. To note an obvious point, the CoC that Ruby filed a week before the May 10, 2010 elections could not have served her at all as her filing was way past the deadline that the COMELEC set.

To return to the immediate issue at hand and as previously discussed, a substitution under Section 73 of the OEC speaks of an exceptional, not a regular, situation in an election and should be strictly interpreted according to its terms. In the clearest and simplest terms, without a dead, withdrawing or disqualified candidate of a registered party, there can be no occasion for substitution. This requirement is both temporal and substantive. In the context of this case and in the absence of a valid substitution of Ramon by Ruby, votes for Ramon appearing in the ballots on election day could not have been counted in Ruby's favor.[57]

With a fatally flawed substitution,

Ruby was not a candidate.

In view of the invalidity of Ruby's substitution, her candidacy was fatally flawed and could not have been given effect. Her CoC, standing by itself, was filed late and cannot be given recognition. Without a valid CoC, either by substitution or by independent filing, she could not have been voted for, for the position of Mayor of Lucena City. Thus, the election took place with only one valid candidate standing – Castillo – who should now be proclaimed as the duly elected Mayor.

The ponencia justifies the Vice-Mayor's succession to the office of the Mayor in this wise:

The only time that a second placer is allowed to take the place of a disqualified winning candidate is when two requisites concur, namely: (a) the candidate who obtained the highest number of votes is disqualified; and (b) the electorate was fully aware in fact and in law of that candidate's disqualification as to bring such awareness within the realm of notoriety but the electorate still cast the plurality of votes in favor of the ineligible candidate. xxx But the exception did not apply in favor of Castillo simply because the second element was absent. xxx

On the other hand, Barbara Ruby was properly disqualified by the COMELEC En Banc from assuming the position of Mayor of Lucena City. She was not a substitute candidate because Ramon's disqualification was confirmed only after the elections.

The ponencia's reasoning would have been sound had Ruby been a candidate, who for one reason or another simply cannot assume office. The harsh legal reality however is that she never was and never became a candidate - a status which must be present before the doctrine of rejection of second placer may apply - either through the ordinary method of filing within the period allowed by law or through the extraordinary method of substitution. Ruby's status is comparable to (or even worse than) a candidate whose CoC was cancelled after the elections. As previously discussed, the cancellation of a CoC signifies non-candidacy from the very start, i.e., before the elections, which entitles the "second placer" to assume office. The same result should obtain in this case.

From the perspective of Vice Mayor Alcala's intervention, Ruby did not validly assume the mayoralty post and could not have done so as she was never a candidate with a valid CoC. To recall my earlier discussions, it is only the CoC that gives a person the status of being a candidate. No person who is not a candidate can win. Thus, Ruby – despite being seated – never won. In the absence of any permanent vacancy occurring in the Office of the Mayor of Lucena City, no occasion arises for the application of the law on succession under Section 44 of the Local Government Code[58] and established jurisprudence.[59] Thus, I dissent as the petition of Vice-Mayor Roderick Alcala should have failed.

[1] Rollo (G.R. No. 196804), p. 42.

[2] Id. at 88-92.

[3] Id. at 229.

[4] G.R. No. 184836, December 23, 2009, 609 SCRA 234.

[5] Rollo (G.R. No. 196804), pp. 98-101.

[6] Id. at 102-105.

[7] Id. at 106-124.

[8] Id. at 126-129.

[9] Id. at 130-131.

[10] Id. at 133-134.

[11] Id. at 136.

[12] Id. at 135-138.

[13] Id. at 142-144.

[14] Id. at 145.

[15] Id. at 185-214.

[16] Id. at 305-318.

[17] Id. at 361-375.

[18] Id. at 42-52.

[19] Decision, p. 17.

[20] Id. at 20.

[21] 373 Phil. 896, 908 (1999).

[22] Prior to these laws, the applicable laws were the Revised Administrative Code of 1917, R.A. No. 2264 (An Act Amending the Laws Governing Local Governments by Increasing Their Autonomy and Reorganizing Provincial Governments); and B.P. Blg. 52 (An Act Governing the Election of Local Government Officials).

[23] See, however, Section 15 of R.A. No. 8436, as amended. *Penera v. Commission on Elections*, G.R. No. 181613, November 25, 2009, 605 SCRA 574, 581-586, citing *Lanot v. COMELEC*, G.R. No. 164858, November 16, 2006, 507 SCRA 114.

[24] Section 73 of OEC reads:

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

A person who has filed a certificate of candidacy may, prior to the election, withdraw the same by submitting to the office concerned a written declaration under oath.

No person shall be eligible for more than one office to be filled in the same election, and if he files his certificate of candidacy for more than one office, he shall not be eligible for any of them.

However, before the expiration of the period for the filing of certificates of candidacy, the person who has filed more than one certificate of candidacy may declare under oath the office for which he desires to be eligible and cancel the certificate of candidacy for the other office or offices.

The filing or withdrawal of a certificate of candidacy shall not affect whatever civil, criminal or administrative liabilities which a candidate may have incurred. *[italics supplied]*

Section 13 of R.A. No. 9369, however, adds that “[a]ny person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy: Provided, That, unlawful acts or omissions applicable to a candidate shall effect only upon that start of the aforesaid campaign period[.]” *(italics supplied)*

[25] See *Cipriano v. Commission on Elections*, 479 Phil. 677, 689 (2004).

[26] The statutory basis is Section 74 of OEC which provides:

Section 74. Contents of certificate of candidacy. - The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

Unless a candidate has officially changed his name through a court approved proceeding, a certificate shall use in a certificate of candidacy the name by which he has been baptized, or if has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case of a Muslim, his Hadji name after performing the prescribed religious pilgrimage: Provided, That when there are two or more candidates for an office with the same name and surname, each candidate, upon being made aware of such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.

The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-data and program of government not exceeding one hundred words, if he so desires.

[27] *Miranda v. Abaya*, 370 Phil. 642, 658 (1999). See also *Bautista v. Commission on Elections*, 359 Phil. 1 (1998).

[28] Section 13 of R.A. No. 9369, COMELEC Resolution No. 8678 and Section 78 of OEC.

[29] 1987 Constitution, Article II, Section 26.

[30] See *Pamatong v. Commission on Elections*, G.R. No. 161872, April 13, 2004, 427 SCRA 96, 100-103.

[31] Merriam-Webster's 11th Collegiate Dictionary, p. 655.

[32] If at all, only two grounds for disqualification under the Local Government Code may as well be considered for the cancellation of a CoC, viz.: those with dual citizenship and permanent residence in a foreign country, or those who have acquired the right to reside abroad and continue to avail of the same right after January 1, 1992. It may be argued that these two disqualifying grounds likewise go into the eligibility requirement of a candidate, as stated under oath by a candidate in his CoC.

[33] *Fermin v. Commission on Elections*, G.R. Nos. 179695 and 182369, December 18, 2008, 574 SCRA 782, 792-794.

[34] See Section 7 of R.A. No. 6646.

[35] Sections 68 and 12 of OEC cover these acts: (i) corrupting voters or election officials; (ii) committing acts of terrorism to enhance candidacy; (iii) over spending; (iv) soliciting, receiving or making prohibited contributions; (v) campaigning outside the campaign period; (vi) removal, destruction or defacement of lawful election

propaganda; (vii) committing prohibited forms of election propaganda; (viii) violating rules and regulations on election propaganda through mass media; (ix) coercion of subordinates; (x) threats, intimidation, terrorism, use of fraudulent device or other forms of coercion; (xi) unlawful electioneering; (xii) release, disbursement or expenditure of public funds; (xiii) solicitation of votes or undertaking any propaganda on the day of the election; (xiv) declaration as an insane; and (xv) committing subversion, insurrection, rebellion or any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude.

[36] *Salcedo II v. COMELEC*, 371 Phil. 377, 387 (1999), citing *Aznar v. Commission on Elections*, 185 SCRA 703 (1990).

[37] *Lonzanida v. Commission on Elections*, 311 SCRA 602 [1999]; *Borja v. Commission on Elections* 295 SCRA 157 (1998); *Socrates v. Commission on Elections*, G.R. No. 154512, November 12, 2002; *Latasa v. Commission on Elections*, G.R. No. 154829, December 10, 2003, 417 SCRA 601; *Montebon v. Commission on Elections*, G.R. No. 180444, April 9, 2008, 551 SCRA 50; *Aldovino v. Commission on Elections*, G.R. No. 184836 December 23, 2009.

[38] *Supra* note 36, at 386-389.

[39] *Loong v. Commission on Elections*, G.R. No. 93986, December 22, 1992, 216 SCRA 760, 765-766.

[40] Section 5(a) of R.A. No. 6646.

[41] Section 4(B) of COMELEC Resolution No. 8696 reads:

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

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[.]

[42] Section 253 of OEC.

[43] Section 15 of R.A. No. 9369.

[44] *Miranda v. Abaya*, *supra* note 27, at 658-660.

[45] See: Section 72, OEC; Section 6, R.A. No. 6646.

[46] Section 77 of OEC expressly allows substitution of a candidate who is “disqualified for any cause.”

[47] *Aquino v. Commission on Elections*, G.R. No. 120265, September 18, 1995, 248 SCRA 400, 424.

[48] *Cayat v. Commission on Elections*, G.R. Nos. 163776 and 165736, April 24, 2007, 522 SCRA 23, 43-47; Section 6 of R.A. No. 6646.

[49] *Grego v. Commission on Elections*, G.R. No. 125955, June 19, 1997, 274 SCRA 481, 501.

[50] Separate from these considerations is the possibility that the candidacy of a third-termmer may be considered a nuisance candidate under Section 69 of the Omnibus Election Code. Nuisance candidacy, by itself, is a special

situation that has merited its own independent provision that calls for the denial or cancellation of the CoC if the bases required by law are proven; thus, it shares the same remedy of cancellation for material misrepresentation on the eligibility requirements. The possibility of being a nuisance candidate is not discussed as it is not in issue in the case.

[51] Supra note 41.

[52] See comments at footnote 49 on the possibility of using the nuisance candidate provision under Section 69 of the OEC.

[53] See *Sumulong v. Court of Appeals*, G.R. No. 108817, May 10, 1994, 232 SCRA 372, 385-386.

[54] Section 73 of the OEC states:

Section 73. Certificate of Candidacy – No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed.... [italics supplied]

[55] *Rollo* (G.R. No. 196804), pp. 56-59.

[56] See the analogous ruling of *Miranda v. Abaya*, 370 Phil. 642 (1999) on the principles of valid substitution.

[57] See the related case of *Cayat v. COMELEC*, G.R. No. 163776, April 24, 2007, 523 SCRA 23.

[58] Section 44. Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor and Vice-Mayor. – (a) If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor shall become the governor or mayor.

x x x x

For purposes of this Chapter, a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.

[59] See *Gonzales v. Comelec* (G.R. No. 192856, March 8, 2011, 644 SCRA 761, 800) where the Court held 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. The second place is just that, a second placer – he lost in the elections and was repudiated by either the majority or plurality of voters.”

DISSENTING OPINION

ABAD, J.:

I must disagree with the majority opinion penned by Justice Lucas P. Bersamin.

The Facts and the Case

On December 1, 2009 Ramon Talaga and Philip Castillo filed their respective certificates of candidacy (COC) for the position of mayor of Lucena City in the scheduled May 10, 2010 elections.[1] Four days later on December 5, 2009 Castillo filed a petition[2] before the Commission of Elections (COMELEC) for denial or cancellation of Ramon Talaga’s COC, alleging that the latter had already served three consecutive terms as mayor and was, consequently, disqualified to run for another term.[3]

Ramon countered that the three-term limit rule did not apply to him since the Sandiganbayan preventively suspended him from office during his second and third terms[4] in connection with Criminal Case 27738. In support of his contention, Ramon cited the COMELEC resolution in *Aldovino v. Asilo*[5] which held that the terms during which an elected official was preventively suspended should not be counted for purposes of applying the three-term limit rule. Parenthetically, the cited COMELEC resolution was still pending consideration by the Supreme Court in G.R. 184836, entitled “*Aldovino, Jr. v. Commission on Elections*.”[6]

Eventually, on December 23, 2009 the Supreme Court reversed and set aside the COMELEC resolution in *Aldovino* that Ramon invoked.[7] The Court held that preventive suspension does not constitute interruption of a term or loss of office. Such suspension amounts to a mere temporary incapacity of an elected official to perform the service demanded by his office. Thus, preventive suspension is not a valid ground for avoiding the three-term limit rule.

In view of the Supreme Court decision in *Aldovino*, on December 30, 2009 Ramon filed with the COMELEC a manifestation with motion to resolve,[8] conceding the fact of his disqualification for a fourth term. Acting on his motion, on April 19, 2010 the COMELEC First Division issued a resolution, granting Castillo’s petition and disqualifying Ramon.[9]

Ramon filed a motion for reconsideration of the COMELEC First Division’s April 19, 2010 resolution[10] but, before the COMELEC En Banc could act on his motion, he filed at 9:00 a.m. on May 4, 2010 an ex parte manifestation withdrawing the motion.[11] At 4:30 p.m. on the same date, Barbara Ruby Talaga (Ruby) filed a COC for mayor of Lucena City in substitution of her husband Ramon. She attached a Certificate of Nomination and Acceptance (CONA) from Lakas-Kampi-CMD, the party that nominated Ramon.[12]

Meanwhile, acting on Ramon’s ex parte manifestation, the COMELEC En Banc issued an order on May 5, 2010, declaring the Division’s April 19, 2010 resolution that disqualified him final and executory.[13] Three days later or on May 8, 2010, the COMELEC Law Department wrote a memorandum to the COMELEC En Banc, recommending that Ruby’s COC be given due course.[14]

In the meantime, the automated elections took place two days later on May 10, 2010. Inevitably, although it was Ramon’s name that was on the pre-printed ballot, the votes cast for that name were counted for Ruby, his substitute candidate. She got 44,099 votes as against Castillo’s 39,615 votes.

Castillo promptly filed a petition before the City Board of Canvassers (CBOC) asking for the suspension of Ruby’s proclamation on the ground that the issue of her substitution of her husband was still pending before the COMELEC.[15] As it happened, acting on the COMELEC Law Department’s memorandum, on May 13, 2010 the COMELEC En Banc issued Resolution 8917, giving due course to Ruby’s COC and CONA and directing her inclusion in the certified list of candidates. In view of this, the CBOC proclaimed Ruby winner in the mayoralty race.[16]

On May 20, 2010 Castillo filed with the COMELEC’s Second Division a petition for annulment of Ruby’s proclamation in SPC 10-024, alleging that she could not substitute Ramon, whose COC had been cancelled and denied due course. Citing *Miranda v. Abaya*,[17] Castillo pointed out the denial or cancellation of Ramon’s COC made it impossible for Ruby to substitute him since, to begin with, he did not have a valid candidacy. And Ruby could not be considered a candidate since the COMELEC approved her substitution three days after the elections. Castillo concluded that the votes for Ramon should be considered stray.[18]

In her comment on the petition before the COMELEC,[19] Ruby insisted that she validly substituted her husband since the COMELEC En Banc in fact approved through Resolution 8917 its Law Department’s finding that

Ramon was disqualified. The En Banc had no occasion to deny due course to or cancel Ramon's COC. Notably, Castillo failed to appeal Resolution 8917. Further, the COMELEC First Division's April 19, 2010 resolution merely declared Ramon disqualified from running for a fourth term. It made no finding that he committed misrepresentation, the ground for denial or cancellation of his COC.

Ruby also insisted that the COMELEC did not have to approve her substitution of Ramon since the law even allowed a substitute to file his COC before the Board of Election Inspectors (BEI) if the cause for substitution occurs immediately prior to election day. Section 12 of Republic Act (R.A.) 9006 is also explicit that, in case of valid substitution, the rule considering votes cast for a substituted candidate as stray votes shall not apply if the substitute candidate has the same family name as the one he replaces. Thus, votes cast for Ramon were properly counted in her favor.

On July 26, 2010 respondent Roderick A. Alcala (Alcala), the elected vice-mayor of Lucena City, sought to intervene in the case. He claimed that, since Ruby's substitution was invalid and Castillo clearly lost the elections, he should assume the post of mayor under the rules of electoral succession.[20]

In a resolution dated January 11, 2011,[21] the COMELEC's Second Division dismissed Castillo's petition and Alcala's petition-in-intervention. It held, first, that COMELEC En Banc's Resolution 8917, which had become final and executory, already settled the issue of Ruby's substitution; second, that the *Miranda v. Abaya*[22] ruling did not apply since Castillo's petition cited no material misrepresentation that could be ground for cancellation of Ramon's COC; and, third, the Omnibus Election Code does not require the COMELEC to first approve a substitution before it can take effect.

Upon Castillo and Alcala's motion for reconsideration, however, on May 20, 2011 the COMELEC En Banc issued a resolution,[23] reversing the Second Division's ruling. The En Banc held a) that Resolution 8917 could not attain finality since the COMELEC issued it merely as an incident of its ministerial duty to receive COCs of substitute candidates; and b) that COMELEC issued Resolution 8917 without hearing the interested parties on the issue of substitution.

Further, the COMELEC En Banc found that Resolution 8917 was based on the wrong facts. Ruby filed her COC at 4:30 p.m. on May 4, 2010, not on May 5 as the resolution stated. The COMELEC resolved to disqualify Ramon with finality only on May 5. Consequently, Ruby could not have properly substituted Ramon; she simply became an additional candidate who filed her COC out of time. Thus, said the En Banc, Vice-Mayor Alcala should succeed to the position pursuant to Section 44 of the Local Government Code. Chairman Sixto S. Brillantes, Jr. dissented from the majority.

Ruby and Castillo assailed the COMELEC En Banc's resolution via these consolidated petitions for certiorari and prohibition. On June 21, 2011 the Court issued a status quo ante order in G.R. 196804.[24]

Issues Presented

Was Ramon merely disqualified from running for mayor or was his COC in fact cancelled or denied due course?

Did Ruby validly substitute Ramon as candidate for mayor of Lucena City?

Discussion

There are two remedies available to prevent a candidate from running in an election: a petition for disqualification, and a petition to deny due course to or cancel a COC. The majority holds that, in resolving the case before it, the COMELEC had in fact denied due course to and cancelled Ramon's COC.

I disagree. Although Castillo denominated his petition as one for cancellation or denial of due course to Ramon's

COC and sought the same relief, it did not raise any of the specified grounds for such action under Sections 69 and 78 of the Omnibus Election Code that read:

Sec. 69. Nuisance candidates. – The Commission may motu proprio or upon verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if it is shown that said certificate has been filed to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no bona fide intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate.

x x x x

Sec. 78. Petition to deny due course to or cancel a certificate of candidacy. – A verified petition seeking to deny due course to or cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election. (Emphasis supplied)

Section 69 refers to nuisance candidates. Section 78, on the other hand, treats of material misrepresentation in the COC. Castillo's petition made no claim that Ramon was a nuisance candidate or that he made some material misrepresentation in his COC. All that the petition raised against Ramon's candidacy is the fact that he had already served three consecutive terms as mayor.

Castillo of course points out that by filing a COC for mayor after he had already served three consecutive terms, Ramon actually misrepresented the fact of his eligibility for that office, knowing that it was not the case. But this argument is unavailing because at the time Ramon filed his COC the COMELEC's official stand, supported by this Court's decision in *Borja, Jr. v. Commission on Elections*,^[25] was that the terms during which an elected official was preventively suspended should not be counted for purposes of applying the three-term limit. It was only on December 23, 2009, nearly a month after Ramon filed his COC, that the Supreme Court reversed in *Aldovino, Jr. v. Commission on Elections* the election body's official stand. Thus, it cannot be said that Ramon knowingly misrepresented his eligibility when he filed his COC.

While Castillo denominated his petition as one to deny due course to or cancel Ramon's COC, and prayed for such remedies, the basic rule is that the nature of an action is governed by the allegations in the petition, not by its caption or prayer. We cannot rely simply on the fact that the COMELEC resolution granted the petition without making any qualifications. A closer reading of the resolution will show that Ramon was merely being disqualified for having served three consecutive terms. It made no mention of Ramon's COC as having been cancelled or denied due course, and indeed gave no grounds which would justify such a result. The ponencia cites *Miranda v. Abaya*^[26] to justify its stand, but fails to note that in *Miranda* the Court found that there was blatant misrepresentation, which is in clear contrast to this case.

On the issue of substitution, the law specifically provides that a candidate who has been disqualified for any cause may be substituted by another. Section 77 of the Omnibus Election Code (Batas Pambansa 881) states:

Sec. 77. Candidates in case of death, disqualification or withdrawal. – If after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified. x x x (Emphasis supplied)

Castillo cites *Miranda v. Abaya*[27] as justification for rejecting the substitution of Ramon by Ruby. But the substitution that the Court did not allow in *Miranda* is the substitution of a candidate whose COC has been ordered cancelled on the grounds enumerated in Sections 69 and 78 of the Omnibus Election Code. The reasoning is that it is not possible to substitute such a person since he cannot be considered a candidate at all. Substitution presupposes the existence of a candidate to be substituted.

Miranda recognized that it is possible for a disqualified candidate to have a valid COC since the grounds for disqualification are distinct from the grounds for canceling or denying due course to a COC under Sections 69 and 78 of the Omnibus Election Code. Thus, it does not follow that a disqualified candidate necessarily filed an invalid COC. A disqualified candidate whose COC was neither canceled nor denied due course may be substituted under the proper circumstances provided by law.

Going to another point, it will be recalled that the COMELEC First Division disqualified Ramon from running for mayor on April 19, 2010 upon Castillo's petition. Ramon filed a motion for reconsideration which went up to the COMELEC En Banc but at 9:00 a.m. on May 4, 2010 he filed an ex parte manifestation withdrawing his motion for reconsideration. In the afternoon of the same day, Ruby filed her COC, admittedly before the COMELEC En Banc could act on Ramon's withdrawal of his motion for reconsideration. Only on the following day, May 5, did the COMELEC En Banc acknowledge the withdrawal and considered the First Division's April 19, 2010 resolution final and executory.[28]

The Office of the Solicitor General (OSG) joined Alcala and Castillo in claiming that Ruby did not validly substitute Ramon because at the time that she filed her COC, the COMELEC had not yet disqualified Ramon by final judgment as required by Section 77 of the Omnibus Election Code.

But Ramon's withdrawal of his motion for reconsideration in the morning of May 4, 2010 rendered the COMELEC First Division's April 19, 2010 resolution final and executory, even without the En Banc's formal action. The Court held in *Rodriguez, Jr. v. Aguilar, Sr.*[29] that a motion for reconsideration, once withdrawn, has the effect of canceling such motion as if it were never filed. The consequence of this is that the decision subject of the withdrawn motion for reconsideration ipso facto lapses into finality upon the expiration of period for appeal. Thus, in accordance with COMELEC Rules, the April 19, 2010 resolution became final and executory five days from its promulgation or on April 24, 2010.[30]

The May 5, 2010 COMELEC En Banc resolution merely confirmed the final and executory nature of the First Division's April 19, 2010 resolution. As correctly observed by Chairman Brillantes in his dissent, the withdrawal's effectivity cannot be made to depend on COMELEC approval because, if such were the case, substitution of candidates may be frustrated by either the commission's delay or inaction.

Castillo claims that, for the substitution of a candidate to be effective, the COMELEC must approve the same on or before election day.[31] Here, the COMELEC En Banc issued Resolution 8917 which approved Ruby's COC on May 13, 2010 or three days after the elections.

But no law makes the effectivity of a substitution hinge on prior COMELEC approval. Indeed, it would be illogical to require such prior approval since the law allows a substitute candidate to file his COC even up to mid-day of election day with any board of election inspectors in the political subdivision where he is a candidate. Surely, this rules out the possibility of securing prior COMELEC approval of the substitution. COMELEC Resolution 8917, which gave due course to Ruby's COC and directed her inclusion in the certified list of candidates, amounted to a mere formality since the substitution took effect when she filed her COC and the required CONA.

Finally, I would like to voice my concern regarding Justice Arturo D. Brion's view on the applicability of the three-term limit rule as a ground for disqualification. In his separate opinion, Justice Brion opines that a candidate who has already served three consecutive terms can only be disqualified after he has been proclaimed as the winner for a fourth term. His theory is that the Constitution merely prohibits an official from serving more than three consecutive terms; it does not prohibit him from running for a fourth term.

Such an interpretation, however, would cause confusion in the polls and make a mockery of the election process. It robs qualified candidates of the opportunity of being elected in a fair contest among qualified candidates. The candidacy of one who has already served three consecutive terms is worse than that of a nuisance candidate. Election laws should be interpreted in such a way as to best determine the will of the electorate, not to defeat it. The Supreme Court has on occasion upheld the disqualification of candidates who have already served three consecutive terms from running for another. Indeed in *Aldovino*, penned by no other than Justice Brion himself, the dispositive portion read: "The private respondent Wilfredo F. Asilo is declared DISQUALIFIED to run, and perforce to serve, as Councilor of Lucena City for a prohibited fourth term." [32] (Emphasis supplied)

Thus, while Justice Brion likewise concludes that the action before the COMELEC was a petition for disqualification and not for the denial or cancelation of his COC, I cannot entirely agree with his reasoning.

WHEREFORE, I vote to GRANT the petition of Barbara Ruby Talaga in G.R. 196804, and DISMISS the petition of Philip M. Castillo in G.R. 197015 for lack of merit.

[1] Rollo, G.R. 196804, pp. 218, 220.

[2] Docketed as SPA 09-029 (DC); *id.* at 88-91.

[3] *Id.*

[4] For the periods of October 13 to November 14, 2005 and September 4 to October 30, 2009; *id.* at 229.

[5] Issued by the COMELEC's Second Division on November 28, 2007 and affirmed by the COMELEC En Banc on October 7, 2008.

[6] December 23, 2009, 609 SCRA 234.

[7] *Id.* at 266.

[8] Rollo, G.R. 196804, pp. 98-101.

[9] *Id.* at 102-105.

[10] *Id.* at 106-124.

[11] *Id.* at 126.

[12] *Id.* at 130-131.

[13] *Id.* at 133-134.

[14] *Id.* at 176-179.

[15] *Id.* at 135-138.

[16] *Id.* at 142-145.

[17] 370 Phil. 642 (1999).

[18] Rollo, G.R. 196804, pp. 185-214.

[19] Id. at 283-298.

[20] Id. at 305-318.

[21] Id. at 361-375.

[22] Supra note 17.

[23] Rollo, G.R. 196804, pp. 42-52.

[24] Id. at 506-507.

[25] 356 Phil. 467 (1998).

[26] Supra note 17.

[27] Id.

[28] Rollo, G.R. 196804, pp. 490-491, 527-529.

[29] 505 Phil. 468 (2005).

[30] Part IV, Rule 18, Section 13(b) in relation to Part V, B, Rule 25 of the 1993 COMELEC Rules of Procedure.

[31] Rollo, G.R. 197015, pp. 35-36.

[32] Supra note 6, at 266-267.

CONCURRING AND DISSENTING OPINION

MENDOZA, J.:

The subject consolidated petitions for certiorari seek to annul and set aside the En Banc Resolution of the Commission on Elections (Comelec) in SPC No. 10-024, dated May 20, 2011, which, among others, ordered the respondent Vice-Mayor to succeed as Mayor of Lucena City, pursuant to Section 44 of the Local Government Code.

From the records, it appears that:

1] On December 1, 2009, Ramon Y. Talaga (Ramon) and Philip M. Castillo (Castillo) filed their respective Certificates of Candidacy (CoC) before the Commission on Elections (Comelec).

2] On December 5, 2009, Castillo filed the initiatory pleading, a petition, docketed as SPA No. 09-029 (DC) and entitled, “In the Matter of the Petition To Deny Due Course or to Cancel Certificate of Candidacy of Ramon Y. Talaga, Jr. as Mayor For Having Already Served Three (3) Consecutive Terms as a City Mayor of Lucena,” praying as follows:

WHEREFORE, premises considered, it is respectfully prayed that the Certificate of Candidacy filed by the respondent be denied due course to or cancel the same and that he be declared as a disqualified candidate under the existing Election Laws and by the provisions of the New Local Government Code.” [Emphasis supplied]

3] On December 30, 2009, Ramon filed a Manifestation with Motion to Resolve SPA No. 09-029 (DC) wherein he insisted that there was no misrepresentation on his part constituting a ground for a denial of due course to his CoC or cancellation thereof, but in view of the ruling in *Aldovino*,^[1] he acknowledged that he was indeed not

eligible and disqualified to run as Mayor of Lucena City, praying that

WHEREFORE, it is most respectfully prayed that the instant petition be SUBMITTED for decision and that he be declared as DISQUALIFIED to run for the position of Mayor of Lucena City in view of the new ruling laid down by the Supreme Court. [Emphasis supplied]

4] On April 19, 2010, the Comelec First Division promulgated its resolution disqualifying Ramon from running as Mayor of Lucena City in the May 10, 2010 local elections, the dispositive portion of which reads:

WHEREFORE, premises considered, the instant Petition is hereby GRANTED. Accordingly, Ramon S. Talaga, Jr. is hereby DISQUALIFIED to run for Mayor of Lucena City for the 10 May 2010 National and Local Elections. [Emphases supplied]

5] On April 21, 2010, Ramon filed a Verified Motion for Reconsideration in SPA No. 09-029.

6] On May 4, 2010, at 9:00 o'clock in the morning, Ramon filed an Ex Parte Manifestation of Withdrawal of the Pending Motion for Reconsideration.

7] On the same day, May 4, 2010, at 4:30 o'clock in the afternoon, the wife of Ramon, Barbara Ruby C. Talaga (Barbara Ruby), filed a Certificate of Candidacy for Mayor of Lucena City, attaching thereto the Certificate of Nomination and Acceptance (CONA) issued by the Lakas-Kampi-CMD, the party that had nominated Ramon.

8] On May 5, 2010, the Comelec En Banc, in SPC No. 10-024, issued an Order declaring the April 19, 2010 Resolution disqualifying Ramon as having become final and executory, the decretal portion of which reads:

... the Commission hereby orders as follows:

1] To NOTE the instant Manifestation; and

2] To consider the April 19, 2010 Resolution of the Commission First Division final and executory.

SO ORDERED.

9] On May 10, 2010, the National and Local Elections were successfully conducted. The name of Ramon remained printed on the ballots but the votes cast in his favor were counted in favor of Barbara Ruby as his substitute candidate.

10] On May 11, 2010, Castillo filed before the Board of Canvassers of Lucena City a Petition to Suspend Proclamation praying for the suspension of the proclamation of Ramon or Barbara Ruby as the winning candidate.

11] On May 12, 2010, at around 5:17 o'clock in the afternoon, per City/Municipal Certificate of Canvass, Barbara Ruby was credited with 44,099 votes while Castillo garnered 39,615 votes.

12] On May 13, 2010, the Comelec, in Resolution No. 8917, gave due course to the CoC of Barbara Ruby as substitute candidate.

13] On the same day, May 13, 2010, the Board of Canvassers of Lucena City did not act on Castillo's Petition to Suspend Proclamation and proclaimed Barbara Ruby as the winning candidate and elected Mayor of Lucena City.

14] Aggrieved, on May 20, 2010, Castillo filed his Petition (For Annulment of Proclamation of Barbara Ruby C. Talaga as the Winning Candidate for Mayor of Lucena City, Quezon) with the Comelec, which was docketed as SPC No. 10-024, arguing 1] that Barbara Ruby could not substitute Ramon because his CoC had been cancelled and denied due course; and 2] that Barbara Ruby could not be considered a candidate because the Comelec En Banc had approved her substitution three days after the elections. Hence, the votes cast for Ramon should be considered stray.

15] On June 18, 2010, Barbara Ruby filed her Comment on the Petition for Annulment of Proclamation contending that the substitution was valid on the ground that the Comelec En Banc did not deny due course to or cancel Ramon's CoC, despite a declaration of disqualification as there was no finding of misrepresentation.

16] On July 26, 2010, Roderick Alcala (Alcala), the elected Vice Mayor of Lucena City filed a Motion for Leave to Admit Attached Petition in Intervention and a Petition in Intervention, asserting that he should assume the position of Mayor because Barbara Ruby's substitution was invalid and Castillo lost in the elections.

17] On January 11, 2011, the Comelec Second Division dismissed the petition of Castillo and the motion to intervene of Alcala. It reasoned out, among others, that Resolution No. 8917 (allowing the substitution) became final and executory when Castillo failed to act after receiving a copy thereof.

18] Not in conformity, both Castillo and Alcala filed their respective motions for reconsideration of the January 11, 2011 Resolution of the Comelec Second Division for being contrary to law and jurisprudence.

Castillo argued 1] that the determination of the candidacy of a person could not be made after the elections and then given retroactive effect; and 2] that the CoC of Ramon was in reality cancelled and denied due course which consequently barred him from being substituted as a candidate. Accordingly, he prayed that the votes cast in favor of both Ramon and Barbara Ruby be considered stray and that he be proclaimed winner, being the qualified candidate with the highest number of votes.

Alcala, in advocacy of his position, argued that 1] Resolution 8917 was based on erroneous set of facts; and 2] there was no valid reason for the substitution as there was no withdrawal, disqualification or death of another candidate.

Barbara Ruby, in her defense, countered that the ruling of the Comelec Second Division was in accord with law and jurisprudence and that doubts as to the validity of the substitution should be resolved in her favor as she received the mandate of the people of Lucena City.

19] On May 20, 2011, acting on the motions for reconsideration, the Comelec En Banc reversed the January 11, 2011 Resolution of the Comelec Second Division reasoning out that 1] Resolution 8917 was issued without any adversarial proceedings as the interested parties were not given the opportunity to be heard; 2] Resolution 8917 was based on erroneous set of facts because Barbara Ruby filed her Certificate of Candidacy on May 4, 2010 at 4:30 o'clock in the afternoon, before the Comelec acted on Ramon's withdrawal of his motion for reconsideration on May 5, 2010, and so premature; and 3] Barbara Ruby's Certificate of Candidacy was filed out of time because she was just another candidate, not a substitute.

It also ruled that Barbara Ruby being disqualified, the law on succession under Section 44 of the Local Government Code should apply.

Accordingly, the Comelec En Banc decreed:

WHEREFORE, judgment is hereby rendered:

- REVERSING and SETTING ASIDE the January 11, 2011 Resolution of the Second Division;
- GRANTING the petition-in-intervention of Roderick Alcala;
- ANNULING the election and proclamation of respondent Barbara C. Talaga as mayor of Lucena City and CANCELLING the Certificate of Canvass and Proclamation issued therefor;
- Ordering respondent Barbara Ruby Talaga to cease and desist from discharging the functions of the Office of the Mayor;

- In view of the permanent vacancy in the Office of the Mayor of Lucena City, the proclaimed Vice-Mayor is ORDERED to succeed as Mayor as provided under Section 44 of the Local Government Code;

- DIRECTING the Clerk of Court of the Commission to furnish copies of this Resolution to the Office of the President of the Philippines, the Department of Interior and Local Government, the Department of Finance and the Secretary of the Sangguniang Panglungsod of Lucena City.

Let the Department of Interior and Local Government and the Regional Election Director of Region IV of COMELEC implement this resolution.

SO ORDERED.

Hence, these consolidated petitions of Castillo and Barbara Ruby.

In their respective petitions, both Barbara Ruby and Castillo pray, among others, that she or he be declared as the winning candidate in the May 10, 2010 mayoralty election in Lucena City.

II – Nature of Petition under Section 78

As the records indicate, the controversy stemmed from the initiatory pleading filed by Castillo in SPA No. 09-029 (DC) entitled, “In the Matter of the Petition To Deny Due Course or to Cancel Certificate of Candidacy of Ramon Y. Talaga, Jr. as Mayor For Having Already Served Three (3) Consecutive Terms as a City Mayor of Lucena,” a petition filed under Section 78 of the the Omnibus Election Code (Batas Pambansa Blg. 881) which reads:

Section 78. Petition to deny due course to or cancel a certificate of candidacy. - A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

A certificate of candidacy is a formal requirement for eligibility to public office.[2] Section 73 of the Omnibus Election Code provides that no person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed therein. Section 74 thereof provides that the CoC of the person filing it shall state, among others, that he is eligible for the office he seeks to run, and that the facts stated therein are true to the best of his knowledge. In the case of *Sinaca v. Mula*,[3] the Court had an occasion to elaborate on the nature of a CoC in this wise:

A certificate of candidacy is in the nature of a formal manifestation to the whole world of the candidate's political creed or lack of political creed. It is a statement of a person seeking to run for a public office certifying that he announces his candidacy for the office mentioned and that he is eligible for the office, the name of the political party to which he belongs, if he belongs to any, and his post-office address for all election purposes being as well stated.

Thus, when Ramon filed his CoC before the COMELEC, he pronounced before the electorate his intention to run for the mayoralty post and declared that he was “eligible” for the said office.

A petition filed under Section 78 of the Omnibus Election Code is one of two remedies by which the candidacy of a person can be questioned. The other is a petition under Section 68.[4] In *Mitra v. Comelec*,[5] the nature of a petition under Section 78 was further explained as follows:

Section 74, in relation to Section 78, of the Omnibus Election Code (OEC) governs the cancellation of, and grant or denial of due course to, COCs. The combined application of these sections requires that the candidate's stated facts in the COC be true, under pain of the COC's denial or cancellation if any false representation of a material fact is made. To quote these provisions:

SEC. 74. Contents of certificate of candidacy. — The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

x x x x

SEC. 78. Petition to deny due course to or cancel a certificate of candidacy. — A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing not later than fifteen days before the election.

The false representation that these provisions mention must necessarily pertain to a material fact. The critical material facts are those that refer to a candidate's qualifications for elective office, such as his or her citizenship and residence. The candidate's status as a registered voter in the political unit where he or she is a candidate similarly falls under this classification as it is a requirement that, by law (the Local Government Code), must be reflected in the COC. The reason for this is obvious: the candidate, if he or she wins, will work for and represent the political unit where he or she ran as a candidate.

The false representation under Section 78 must likewise be a "deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible." Given the purpose of the requirement, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office. Thus, the misrepresentation that Section 78 addresses cannot be the result of a mere innocuous mistake, and cannot exist in a situation where the intent to deceive is patently absent, or where no deception on the electorate results. The deliberate character of the misrepresentation necessarily follows from a consideration of the consequences of any material falsity: a candidate who falsifies a material fact cannot run; if he runs and is elected, he cannot serve; in both cases, he can be prosecuted for violation of the election laws. [Emphases supplied]

A- A Petition to Deny Due Course or
to Cancel a CoC under Section 78
is different from a Disqualification
Case and a Quo Warranto Case

In *Fermin v. Comelec*,^[6] it was stressed 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." In the said case, it was written:

To emphasize, a petition for disqualification, on the one hand, can be premised on Section 12 or 68 of the OEC, or Section 40 of the LGC. On the other hand, a petition to deny due course to or cancel a CoC can only be grounded on a statement of a material representation in the said certificate that is false. The petitions also have different effects. While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all.

In *Fermin*, a petition to deny due course or to cancel a certificate of candidacy was also distinguished from a petition for quo warranto as follows:

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. [Emphases in the original]

Also as can be gleaned from the foregoing, it was clearly stressed in *Fermin* that 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 was false.

When it was stated in *Fermin* that the false material representation "may relate to the qualifications required of the public office he/she is running for," it simply meant that it could cover one's qualifications. It was not, however, restricted to qualifications only. When word "may" was used, it meant that it could relate to, or cover, any other material misrepresentation as to eligibility. Certainly, when one speaks of eligibility, it is understood that a candidate must have all the constitutional and statutory qualifications^[7] and none of the disqualifications.^[8] "Eligible x x relates to the capacity of holding as well as that of being elected to an office."^[9] "Ineligibility" has been defined as a "disqualification or legal incapacity to be elected to an office or appointed to a particular position."^[10]

B - A person whose certificate is cancelled or denied due course under Section 78 cannot be treated as a candidate at all

A cancelled certificate of candidacy cannot give rise to a valid candidacy, and much less to valid votes.^[11] Much in the same manner as a person who filed no certificate of candidacy at all and a person who filed it out of time, a person whose certificate of candidacy is cancelled or denied due course is no candidate at all.^[12] The Court has been consistent on this. In *Fermin*, in comparing a petition under Section 78 with a petition under Section 68, it was written: "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." Thus, whether or not his CoC was cancelled before or after the election is immaterial, his votes would still be considered stray as his certificate was void from the beginning.

C - A candidate disqualified by final judgment before an election cannot be voted for, and votes cast for him shall not be counted.

Granting *arguendo* that the petition is considered as one for disqualification, still, he cannot be voted for and the votes for him cannot be counted if he was disqualified by final judgment before an election. In Section 6 of R.A. No. 6646 or The Electoral Reforms Law of 1987, it is clearly provided that a candidate disqualified by final judgment before an election cannot be voted for, and votes cast for him shall not be counted. This provision of law was applied in the case of *Cayat v. Comelec*,^[13] where it was written:

The law expressly declares that a candidate disqualified by final judgment before an election cannot be voted for, and votes cast for him shall not be counted. This is a mandatory provision of law. Section 6 of Republic Act No. 6646, The Electoral Reforms Law of 1987, states:

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.

Section 6 of the Electoral Reforms Law of 1987 covers two situations. The first is when the disqualification becomes final before the elections, which is the situation covered in the first sentence of Section 6. The second is when the disqualification becomes final after the elections, which is the situation covered in the second sentence of Section 6.

The present case falls under the first situation. Section 6 of the Electoral Reforms Law governing the first situation is categorical: a candidate disqualified by final judgment before an election cannot be voted for, and votes cast for him shall not be counted. The Resolution disqualifying Cayat became final on 17 April 2004, way before the 10 May 2004 elections. Therefore, all the 8,164 votes cast in Cayat's favor are stray. Cayat was never a candidate in the 10 May 2004 elections. Palileng's proclamation is proper because he was the sole and only candidate, second to none.

D - A candidate whose CoC has been cancelled or denied due course cannot be substituted.

Section 77[14] of the Omnibus Election Code enumerates the instances wherein substitution may be allowed: They are death, disqualification and withdrawal of another. A candidate whose CoC has been cancelled or denied due course cannot be substituted. This was the clear ruling in *Miranda v. Abaya*,[15] where it was written:

It is at once evident that the importance of a valid certificate of candidacy rests at the very core of the electoral process. It cannot be taken lightly, lest there be anarchy and chaos. Verily, this explains why the law provides for grounds for the cancellation and denial of due course to certificates of candidacy.

After having considered the importance of a certificate of candidacy, it can be readily understood why in *Bautista* we ruled that a person with a cancelled certificate is no candidate at all. Applying this principle to the case at bar and considering that Section 77 of the Code is clear and unequivocal that only an official candidate of a registered or accredited party may be substituted, there demonstrably cannot be any possible substitution of a person whose certificate of candidacy has been cancelled and denied due course. [Emphases supplied]

III – An assiduous assessment of the factual situation leads to the conclusion that Petitioner Castillo should have been proclaimed mayor-elect of Lucena City

I concur with the majority that Ramon, having served as mayor of Lucena City for three consecutive terms, was ineligible to run again for the same position in the May 10, 2012 election as his candidacy was proscribed by no less than the Constitution. Section 8, Article X of the 1987 Constitution provides:

Section 8. The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of

his service for the full term for which he was elected.

In line therewith, Section 43 of the Local Government Code provides:

Sec. 43. Term of Office.

x x x.

(b) No local elective official shall serve for more than three consecutive terms in the same position. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official concerned was elected.

In *Lonzanida v. Commission on Elections*,^[16] the Court held that the two conditions for the application of the disqualification must concur: 1) that the official concerned has been elected for three consecutive terms in the same local government post; and 2) that he has fully served three consecutive terms. In *Aldovino v. Comelec*,^[17] the Court stressed that “preventive suspension, by its nature, does not involve an effective interruption of a term and should therefore not be a reason to avoid the three-term limitation.”

Contending that Ramon was ineligible and must be disqualified to run again as Mayor, Castillo filed before the Comelec a petition entitled, “In the Matter of the Petition To Deny Due Course or to Cancel Certificate of Candidacy of Ramon Y. Talaga, Jr. as Mayor For Having Already Served Three (3) Consecutive Terms as a City Mayor of Lucena,” praying “that the Certificate of Candidacy filed by the respondent be denied due course to or cancel the same and that he be declared as a disqualified candidate under the existing Election Laws and by the provisions of the New Local Government Code.”

Evidently, the petition filed was pursuant to Section 78 of the Omnibus Election Code. On December 30, 2009, Ramon filed a Manifestation with Motion to Resolve SPA No. 09-029 (DC) wherein he acknowledged that he was indeed not eligible and disqualified to run as Mayor of Lucena City. On April 19, 2010, the Comelec First Division promulgated its Resolution “granting the petition of Castillo and disqualifying Ramon to run for Mayor of Lucena City for the May 10, 2010 National and Local Elections.”

Specious, if not ludicrous, is the argument that there was nothing in the resolution from which it can be deduced that the Comelec First Division cancelled, or denied due course to, Ramon’s CoC. Such argument strains or tasks one’s credulity too much. Common sense dictates that when the Comelec First Division granted the petition of Castillo, it, in effect, granted his prayer which reads:

WHEREFORE, premises considered, it is respectfully prayed that the Certificate of Candidacy filed by the respondent be denied due course to or cancel the same and that he be declared as a disqualified candidate under the existing Election Laws and by the provisions of the New Local Government Code.” [Emphasis supplied]

Needless to state, the Comelec considered Ramon as having made material misrepresentation as he was manifestly not eligible, having served as mayor of Lucena City for three consecutive terms. It could not have been otherwise. A candidate who states in his CoC that he is “eligible,” despite having served the constitutional limit of three consecutive terms, is clearly committing a material misrepresentation, warranting not only a cancellation of his CoC but also a proscription against substitution.

As held in *Bautista*,^[18] *Miranda*,^[19] *Gador*,^[20] and *Fermin*,^[21] a person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all and his votes will be considered as stray as his certificate was void from the beginning. Also in *Cayat*,^[22] assuming that this is a disqualification case, the rule is that a candidate disqualified by final judgment before an election cannot be voted for, and votes cast for him shall not be counted.

Accordingly, when his CoC was denied due course or cancelled, Ramon was never considered a candidate at all from the beginning.

Indeed, on April 21, 2010, Ramon filed a Verified Motion for Reconsideration, but on May 4, 2010, at 9:00 o'clock in the morning, he filed an Ex Parte Manifestation of Withdrawal of the Pending Motion for Reconsideration. His motion, in effect, rendered the April 19, 2010 Resolution of the Comelec First Division as final and executory pursuant to Section 13, Rule 18 of the 1993 COMELEC Rules of Procedure, which reads:

Sec. 13. Finality of Decisions or Resolutions. - (a) In ordinary actions, special proceedings, provisional remedies and special reliefs; a decision or resolution of the Commission en banc shall become final and executory after thirty (30) days from its promulgation.

(b) In Special Actions and Special Cases, a decision or resolution of the Commission en banc shall become final and executory after five (5) days from its promulgation unless restrained by the Supreme Court.

(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.

The reason is that a motion for reconsideration once withdrawn has the effect of cancelling such motion as if it was never filed. In *Rodriguez v. Aguilar*,^[23] it was written:

Upon the withdrawal by respondent of his Motion for Reconsideration, it was as if no motion had been filed. Hence, the Order of the trial court under question became final and executory 15 days from notice by the party concerned.

In the same manner that the withdrawal of an appeal has the effect of rendering the appealed decision final and executory, the withdrawal of the Motion for Reconsideration in the present case had the effect of rendering the dismissal Order final and executory. By then, there was no more complaint that could be amended, even for the first time as a matter of right.

Although the April 19, 2010 Resolution became final and executory on April 24, 2010, it has no effect on Ramon's candidacy or his purported substitute because his certificate was void from the beginning. The date of the finality of the denial of due course or cancellation of a CoC has no controlling significance because, as consistently ruled in *Bautista*,^[24] *Miranda*,^[25] *Gador*,^[26] and *Fermin*,^[27] "the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all."

No substitution in case of cancellation
or denial of due course of a CoC

As Ramon was never a candidate at all, his substitution by Barbara Ruby was legally ineffectual. This was the clear ruling in the case of *Miranda v. Abaya*,^[28] where it was ruled that "considering that Section 77 of the Code is clear and unequivocal that only an official candidate of a registered or accredited party may be substituted, there demonstrably cannot be any possible substitution of a person whose certificate of candidacy has been cancelled and denied due course."

There being no valid substitution,
the candidate with the highest number
of votes should be proclaimed as the
duly elected mayor

As there was no valid substitution, Castillo, the candidate with the highest number of votes is entitled to be, and should have been, proclaimed as the duly elected mayor. The reason is that he is the winner, not the loser. He was

the one who garnered the highest number of votes among the recognized legal candidates who had valid CoCs. Castillo was not the second placer. He was the first placer.

On this score, I have to digress from the line of reasoning of the majority and register my dissent.

The ruling in Cayat is applicable because, although the petition therein was for disqualification, the CoC of Cayat was cancelled. At any rate, even granting that it is not exactly at all fours, the undisputed fact is that Castillo's petition is one under Section 78. That being the case, the applicable rule is that enunciated in in Bautista,[29] Miranda,[30] Gador,[31] and Fermin[32] - "the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all." The votes cast for him and those for his purported substitute could only be considered as stray and could not be counted.

The Second Placer Doctrine

The second placer doctrine applies only in case of a vacancy caused by a disqualification under Section 12 and Section 68 of the OEC and Section 40 of the LGC or quo warranto petition under Section 253. When a winning candidate is disqualified under Section 12 and Section 68 of the OEC and Section 40 of the LGC or unseated under Section 253, a vacancy is created and succession under Section 44 of the the Local Government Code[33] becomes operable. Section 44 provides:

CHAPTER II

Vacancies and Succession

Section 44. Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor. - If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice-governor, mayor, or vice-mayor, the highest ranking sanggunian member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the governor, vice-governor, mayor or vice-mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein.

(b) If a permanent vacancy occurs in the office of the punong barangay, the highest ranking sanggunian barangay member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the punong barangay.

(c) A tie between or among the highest ranking sanggunian members shall be resolved by the drawing of lots.

(d) The successors as defined herein shall serve only the unexpired terms of their predecessors.

For purposes of this Chapter, a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.

For purposes of succession as provided in the Chapter, ranking in the sanggunian shall be determined on the basis of the proportion of votes obtained by each winning candidate to the total number of registered voters in each district in the immediately preceding local election.

As stated therein, one of the causes for a vacancy is when a winning candidate fails to qualify or is disqualified. The vacancy is created when a first placer is disqualified after the elections. This is very clear because before an election, there is no first placer to speak of.

As the CoC of Ramon was cancelled, he was not a candidate at all. As he was not a candidate, he could not be considered a first placer. The first placer was the bona fide candidate who garnered the highest number of votes

among the legally recognized candidates – Castillo.

As Ramon was not a candidate, his purported substitute, Barbara Ruby, was not a bona fide candidate. There is, therefore, no vacancy, the only situation which could start the ball rolling for the operation of the rule of succession under Rule 44 of the Local Government Code.

Granting arguendo that Castillo was the second placer, the doctrine would still not apply

Granting arguendo that Castillo was a second placer, the rejection of the second placer doctrine, first enunciated in *Labo v. Comelec*,^[34] would still not apply in this situation. In *Labo* and similarly situated cases, it was ruled that “the subsequent disqualification of a candidate who obtained the highest number of votes does not entitle the candidate who garnered the second highest number of votes to be declared the winner.” The *Labo* ruling, however, is not applicable in the situation at bench for two reasons: First, Ramon was not a candidate as he was disqualified by final judgment before the elections; and Second, the situation at bench constitutes a clear exception to the rule as stated in *Labo v. Comelec*,^[35] *Cayat v. Comelec*^[36] and *Grego v. Comelec*.^[37]

On the first ground, in *Cayat*, it was ruled that *Labo* is applicable only when there is “no final judgment of disqualification before the elections.” Specifically, *Cayat* reads:

Labo, Jr. v. COMELEC, which enunciates the doctrine on the rejection of the second placer, does not apply to the present case because in *Labo* there was no final judgment of disqualification before the elections. The doctrine on the rejection of the second placer was applied in *Labo* and a host of other cases because the judgment declaring the candidate’s disqualification in *Labo* and the other cases had not become final before the elections. To repeat, *Labo* and the other cases applying the doctrine on the rejection of the second placer have one common essential condition — the disqualification of the candidate had not become final before the elections. This essential condition does not exist in the present case. [Emphases supplied]

In this case, the cancellation of Ramon’s CoC because of his disqualification became final before the May 10, 2010 National and Local Elections.

The only other instance that a second placer is allowed to be proclaimed instead of the first placer is when the exception laid down in *Labo v. Comelec*, *Cayat v. Comelec* and *Grego v. Comelec* is applicable. In *Grego*, it was held that “the exception is predicated on the concurrence of two assumptions, namely: (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.”

In this case, the two assumptions have been satisfied: 1] the cancellation of Ramon’s CoC became final before the May 10, 2010 National and Local Elections and 2] the electorate was conscious of the circumstances surrounding Ramon’s candidacy and subsequent disqualification. The fact that Ramon was a renowned political figure in Lucena City, owing to his three (3) consecutive terms as mayor therein, cannot be denied. Verily, the people of Lucena City were fully aware of the circumstances of his candidacy, but still voted for Ramon despite his notorious ineligibility for the post.

The gratuitous presumption that the votes for Ramon were cast in the sincere belief that he was a qualified candidate is negated by the electorate’s awareness that Ramon had long-served as mayor of the city for almost a decade. This cannot be classified as an innocuous mistake because the proscription was prescribed by the Constitution itself. Indeed, voting for a person widely known as having reached the maximum term of office set by law was a risk which the people complacently took. Unfortunately, they misapplied their franchise and

squandered their votes when they supported the purported substitute, Barbara Ruby. Thus, the said votes could only be treated as stray, void, or meaningless.

In view of all the foregoing, I vote that the petition of Barbara Ruby be DENIED and the petition of Castillo be GRANTED.

[1] *Aldovino, Jr. v. Commission on Elections*, G.R. No. 184836, December 23, 2009, 609 SCRA 235, where it was ruled that preventive suspension, being a mere temporary incapacity, was not a valid ground for avoiding the three-term limit rule.

[2] *Bellosillo, Marquez and Mapili, Effective Litigation & Adjudication of Election Contests*, 2012 Ed., p. 47.

[3] G.R. No. 135691, September 27, 1999, 315 SCRA 266, 276.

[4] *Gonzales v. Comelec*, G.R. No. 192856, March 8, 2011, 644 SCRA 761.

[5] G.R. No. 191938, July 2, 2010, 622 SCRA 744.

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

[7] Section 39 and 6 of Article VI and Sections 2 and 3 of Article VII of the 1987 Constitution and Section 39 of the LGC.

[8] Sections 12 and 68 of the OEC and Section 40 of the LGC.

[9] *Bouvier's Law Dictionary*, Vol. I, Eighth ed., p. 1002.

[10] *Black's Law Dictionary*, Fifth ed., p. 698; and *Bouvier's Law Dictionary*, Vol. I, Eighth ed., p. 1552.

[11] *Bautista v. Comelec*, G.R. No. 133840, November 13, 1998, 298 SCRA 480.

[12] *Miranda v. Abaya*, 370 Phil. 642 (1999). See also *Gador v. Comelec*, 184 Phil 395 (1980).

[13] G.R. No. 163776, April 24, 2007, 522 SCRA 23.

[14] Section 77. Candidates in case of death, disqualification or withdrawal of another. - If after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified. The substitute candidate nominated by the political party concerned may file his certificate of candidacy for the office affected in accordance with the preceding sections not later than mid-day of the day of the election. If the death, withdrawal or disqualification should occur between the day before the election and mid-day of election day, said certificate may be filed with any board of election inspectors in the political subdivision where he is a candidate, or, in the case of candidates to be voted for by the entire electorate of the country, with the Commission.

[15] 370 Phil. 642 (1999).

[16] 370 Phil. 625 (1999).

[17] G.R. No. 184836, December 23, 2009, 609 SCRA 234.

[18] *Supra* note 11.

[19] *Supra* note 12.

- [20] Supra note 12.
- [21] Supra note 6.
- [22] G.R. No. 163776, April 24 2007, 522 SCRA 23.
- [23] G.R. No. 159482, 505 Phil. 468 (2005).
- [24] Supra note 11.
- [25] Supra note 12.
- [26] Supra note 12.
- [27] Supra note 6.
- [28] Supra note 9.
- [29] Supra note 11.
- [30] Supra note 12.
- [31] Supra note 12.
- [32] Supra note 6.
- [33] Republic Act No. 7160; An Act Providing for a Local Government Code of 1991.
- [34] 257 Phil. 1 (1989).
- [35] Id.
- [36] G.R. No. 163776, April 24, 2007, 522 SCRA 23.
- [37] G.R. No. 125955, June 19, 1997, 274 SCRA 481, 501.

SEPARATE OPINION

REYES, J.:

I concur with the ponencia's conclusion that Section 44 of the Local Government Code (LGC) should be applied in filling the permanent vacancy created in the office of the mayor. However, I hold a different view on the nature of the petition filed to challenge the candidacy of Ramon Talaga (Ramon).

The petition filed against Ramon is one for disqualification and not for cancellation of certificate of candidacy (COC).

It is well to remember that Philip Castillo (Castillo) challenged Ramon's candidacy by filing a petition which seeks to deny due course or cancel the COC of the latter on the ground that he had already served three (3) consecutive terms as City Mayor of Lucena. I am of the view that the petition must be treated as one for disqualification since the ground used to support the same, i.e. the violation of the three-term limit, is a disqualifying circumstance which prevents a candidate from pursuing his candidacy.

Indeed, the violation of the three-term limit is not specifically enumerated as one of the grounds for the

disqualification of a candidate under Sections 12 and 68 of the Omnibus Election Code (OEC) or Section 40 of the LGC. Similarly, however, the same ground is not particularly listed as a ground for petition for cancellation of COC under Section 78 of the OEC, in relation to Section 74 thereof. The mentioned provisions read:

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.

Sec. 74. Contents of certificate of candidacy. – The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

The debate in the categorization of the violation of the three-term limit stemmed from the statement of the candidate in his COC that “he is eligible to the office he seeks to be elected to.” The ponencia took this statement to embrace the candidate’s express declaration that he had not served the same position for three (3) consecutive terms. With all due respect, I believe it is reading beyond the plain meaning of the statement. The COC is a declaration by the candidate of his eligibility specifically that he possesses all the qualifications required by the office. The candidate is, in effect, declaring that he possesses the minimum or basic requirements of the law for those intending to run for public office. These requirements are stated in the following provisions of the Constitution and the LGC:

Sections 3 and 6 of Article VI of the Constitution:

Sec. 3. No person shall be a Senator unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least thirty-five years of age, able to read and write, a registered voter, and a resident of the Philippines for not less than two years immediately preceding the day of the election.

Sec. 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election.

Sections 2 and 3 of Article VII of the Constitution:

Sec. 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

Sec. 3. There shall be a Vice-President who shall have the same qualifications and term of office and be elected with and in the same manner as the President. He may be removed from office in the same manner as the President.

x x x x

Section 39 of the LGC:

Sec. 39. Qualifications. - (a) An elective local official must be a citizen of the Philippines; a registered voter in the barangay, municipality, city, or province or, in the case of a member of the sangguniang panlalawigan, sangguniang panlungsod, or sangguniang bayan, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.

x x x x

(c) Candidates for the position of Mayor or Vice-Mayor of independent component cities, component cities, or municipalities must be at least twenty-one (21) years of age on election day.

Basically, the qualifications for running for public office relate to age, residence, citizenship and status as registered voter. These facts are material as they are determinative of the fitness of the candidate for public office. In imposing these qualifications, the law seeks to confine the right to participate in the electoral race to individuals who have reached the age when they can seriously reckon the significance of the responsibilities they wish to assume and who are, at the same time, familiar with the current state and pressing needs of the community.

Thus, when a candidate declares in his COC that he is eligible to the office for which he seeks to be elected, he is attesting to the fact that he possesses all the qualifications to run for public office. It must be deemed to refer only to the facts which he expressly states in his COC, and not to all other facts or circumstances which can be conveniently subsumed under the term “eligibility” for the simple reason that they can affect one’s status of candidacy. To hold the contrary is to stretch the concept of “eligibility” and, in effect, add a substantial qualification before an individual may be allowed to run for public office.

On the other hand, the grounds for disqualification pertain to acts committed by an aspiring local servant, or to a circumstance, status or condition which renders him unfit for public service. Possession of any of the grounds for disqualification forfeits the candidate of the right to participate in the electoral race notwithstanding the fact he has all the qualifications required under the law for those seeking an elective post.

The violation of the three-term limit is a circumstance or condition which bars a candidate from running for public office. It is thus a disqualifying circumstance which is properly a ground for a petition for disqualification.

Section 44 of the LGC was properly applied in filling the permanent vacancy in the office of the mayor.

I agree with the ponencia’s conclusion that Roderick Alcala (Alcala), the duly-elected Vice-Mayor should succeed to the office of the mayor. Section 44 of the LGC clearly states:

Sec. 44. Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor. - If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. x x x.

The Commission on Elections (COMELEC) en banc affirmed Ramon’s disqualification on May 5, 2010. This eventuality could have given Castillo, the candidate who received the second highest number of votes, the right to be proclaimed to the office of the mayor. However, it must be noted that the COMELEC gave due course to Barbara Ruby Talaga’s (Barbara) COC as substitute candidate for Ramon and was even proclaimed Mayor of Lucena City. It was only after the elections that a petition was filed to challenge Barbara’s eligibility and was ruled upon by the COMELEC. Specifically, on January 11, 2011, the COMELEC Second Division dismissed the

petition and the petition-in-intervention filed by Alcala. However, on May 20, 2011, the COMELEC en banc issued a Resolution, reversing the ruling of the Second Division, the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered:

- REVERSING and SETTING SIDE the January 11, 2011 Resolution of the Second Division;
- GRANTING the petition-in-intervention of Roderick A. Alcala;
- ANNULING the election and proclamation of respondent Barbara C. Talaga as mayor of Lucena City and CANCELLING the Certificate of Canvass and Proclamation issued therefore;
- Ordering respondent Barbara Ruby Talaga to cease and desist from discharging the functions of the Office of the Mayor;
- In view of the permanent vacancy in the Office of the Mayor of Lucena City, the proclaimed Vice-Mayor is ORDERED to succeed as Mayor as provided under Section 44 of the LGC;

X X X X

Upon the finality of the foregoing resolution, a permanent vacancy was created in the office of the mayor which therefore must be filled in accordance with Section 44 of the LGC.

Castillo, the candidate who received the second highest number of votes, cannot be deemed to have won the elections. 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.[1] The lone instance when the second placer can take the stead of a disqualified candidate was pronounced in *Labo v. COMELEC*,[2] viz:

[I]f the electorate fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety, would nonetheless cast their votes in favor of the ineligible candidate. In such case, the electorate may be said to have waived the validity and efficacy of their votes by notoriously misapplying their franchise or throwing away their votes, in which case, the eligible candidate obtaining the next higher number of votes may be deemed elected.

Based on the circumstances obtaining in this case, Barbara's disqualification was not notoriously known in Lucena City since the COMELEC was only able to rule on her disqualification after the elections. Thus, during the election day, the electorate reasonably assumed that Barbara is a qualified candidate and that the votes they cast in her favor will not be misapplied. Little did they know that the candidate they voted for will eventually be disqualified and ousted out of office.

In view of the foregoing, I vote to DISMISS the petitions.

[1] *Gonzales v. COMELEC*, G.R. No. 192856, March 8, 2011, 644 SCRA 761.

[2] G.R. No. 105111, July 3, 1992, 211 SCRA 297.

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