

MAYOR GAMAL S. HAYUDINI, PETITIONER, VS. COMMISSION ON ELECTIONS AND MUSTAPHA J. OMAR, RESPONDENTS.

G.R. No. 207900. April 22, 2014

Ponente: PERALTA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-207900/>

PERALTA, J.:

For the Court's resolution is a Petition for Certiorari and Prohibition[1] under Rule 65, which petitioner Gamal S. Hayudini (Hayudini) filed to set aside and annul the assailed Resolutions of the Commission on Elections (COMELEC), dated June 20, 2013[2] and July 10, 2013,[3] which cancelled his Certificate of Candidacy for the mayoralty seat in the 2013 local elections in South Ubian, Tawi-Tawi, for having been issued with grave abuse of discretion amounting to lack or in excess of jurisdiction.

The antecedent facts are:

On October 5, 2012, Hayudini filed his Certificate of Candidacy[4] (CoC) for the position of Municipal Mayor of South Ubian, Tawi-Tawi in the May 13, 2013 National and Local Elections held in the Autonomous Region in Muslim Mindanao. Ten days after, or on October 15, 2012, Mustapha J. Omar (Omar) filed a Petition to Deny Due Course or Cancel Hayudini's CoC, entitled Mustapha J. Omar v. Gamal S. Hayudini, docketed as SPA No. 13-106(DC)(F).[5] Omar basically asserted that Hayudini should be disqualified for making false representation regarding his residence. He claimed that Hayudini declared in his CoC that he is a resident of the Municipality of South Ubian when, in fact, he resides in Zamboanga City.

Thereafter, on November 30, 2012, Hayudini filed a Petition for Inclusion in the Permanent List of Voters in Barangay Bintawlan, South Ubian before the Municipal Circuit Trial Court (MCTC). Despite the opposition of Ignacio Aguilar Baki, the MCTC granted Hayudini's petition on January 31, 2013.[6] On that same day, the COMELEC's First Division dismissed[7] Omar's earlier petition to cancel Hayudini's CoC in SPA No. 13-106(DC)(F) for lack of substantial evidence that Hayudini committed false representation as to his residency.

Oppositor Baki, subsequently, elevated the case to the Bongao Regional Trial Court (RTC), Branch 5. The RTC, on March 8, 2013, reversed[8] the MCTC ruling and ordered the deletion of Hayudini's name in Barangay Bintawlan's permanent list of voters. In view of said decision, Omar filed before the COMELEC a Petition to Cancel the Certificate of Candidacy of Gamal S. Hayudini by Virtue of a Supervening Event on March 26, 2013. The petition was docketed as SPA No. 13-249(DC)(F).[9] Hayudini appealed the March 8, 2013 RTC decision to the Court of Appeals (CA), but on April 17, 2013, in CA-G.R. SP No. 05426,[10] the same was denied.

On May 13, 2013, Hayudini won the mayoralty race in South Ubian, Tawi-Tawi. He was proclaimed and, consequently, took his oath of office.

On June 20, 2013, the COMELEC Second Division issued a Resolution[11] granting Omar's second petition to cancel Hayudini's CoC. The dispositive portion of the COMELEC Resolution reads:

WHEREFORE, premises considered, the instant petition is hereby GRANTED. Accordingly, the Certificate of

Candidacy filed by Gamal S. Hayudini as Mayor of South Ubian, Tawi-Tawi, in the 13 May 2013 elections, is hereby CANCELLED.

The Office of the Deputy Executive Director for Operations is hereby directed to constitute a Special Board of Canvassers for the purpose of proclaiming the lawful winner for mayoralty position in South Ubian, Tawi-Tawi during the 13 May 2013 elections.

SO ORDERED.[12]

Hayudini, thus, filed a Motion for Reconsideration with the COMELEC En Banc, arguing that its Second Division committed grave error when it gave due course to a belatedly filed petition and treated the March 8, 2013 RTC Decision as a supervening event.

On July 10, 2013, the COMELEC En Banc denied Hayudini's Motion for Reconsideration for lack of merit. The decretal portion of the En Banc's assailed Resolution states:

WHEREFORE, premises considered, the Commission RESOLVED, as it hereby RESOLVES to DENY this Motion for Reconsideration for LACK OF MERIT. Consequently, the June 20, 2013 Resolution of the Commission (Second Division) is hereby affirmed.

Corollary thereto, the proclamation of respondent GAMAL S. HAYUDINI is hereby declared null and void and without any legal force and effect. SALMA A. OMAR is hereby proclaimed as the duly-elected Mayor for South Ubian, Tawi-Tawi, being the qualified candidate obtaining the highest number of votes, considering the doctrine laid down by the case *Aratea v. Comelec*[13] that a cancelled CoC cannot give rise to a valid candidacy, and much less, to a valid vote, to wit:

"Ergo, since respondent Lonzanida was never a candidate for the position of mayor [of] San Antonio, Zambales, the votes cast for him should be considered stray votes. Consequently, Intervenor Antipolo, who remains as the sole candidate for the mayoralty post and obtained the highest number of votes, should now be proclaimed as the duly-elected Mayor of San Antonio, Zambales.

Lonzanida's certificate of candidacy was cancelled, because he was ineligible or not qualified to run for Mayor. Whether his certificate of candidacy is cancelled before or after elections is immaterial because the cancellation on such ground means he was never a candidate from the very beginning, his certificate of candidacy being void ab initio. There was only one qualified candidate for Mayor in the May 2010 elections - Antipolo, who therefore received the highest number of votes."

The Office of the Deputy Executive Director for Operations is hereby directed to constitute a Special Board of Canvassers for the purpose of proclaiming SALMA OMAR as the winning candidate for mayoralty position in South Ubian, Tawi-Tawi during the May 13, 2013 elections.

SO ORDERED.[14]

Thus, Hayudini filed the instant petition for certiorari and prohibition.

Hayudini mainly advances the following arguments:

A.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT FAILED TO OUTRIGHTLY DISMISS THE INSTANT PETITION TO CANCEL CERTIFICATE OF CANDIDACY DUE TO SUPERVENING EVENT (SPA. NO. 13-249(DC)(F), DESPITE THE FAILURE OF RESPONDENT OMAR TO COMPLY WITH THE MANDATORY REQUIREMENTS OF SECTIONS 2 AND 4 OF THE COMELEC RESOLUTION NO. 9532.

X X X X

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT REVISITED AND MODIFIED THE FINAL AND EXECUTORY RESOLUTION ISSUED BY THE FIRST DIVISION IN THE SPA NO. 13-106(DC)(F).

III.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT RESOLVED TO CANCEL PETITIONER HAYUDINI'S CERTIFICATE OF CANDIDACY AND DECLARE HIS PROCLAMATION AS NULL AND VOID.

X X X X

L.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT DECREED THE PROCLAMATION OF SALMA A. OMAR AS THE DULY-ELECTED MAYOR FOR SOUTH UBIAN, TAWI-TAWI.[15]

The Court finds the petition to be without merit.

A special civil action for certiorari under Rule 65 is an independent action based on the specific grounds and available only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. It will only prosper if grave abuse of discretion is alleged and is actually proved to exist. Grave abuse of discretion has been defined as the arbitrary exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be condemned as having been done with grave abuse of discretion, such an abuse must be patent and gross.[16] Here, Hayudini miserably failed to prove that the COMELEC rendered its assailed Resolutions with grave abuse of discretion.

Hayudini contends that the COMELEC committed grave abuse of discretion when it admitted, and later granted, Omar's petition despite failure to comply with Sections 2 and 4 of Rule 23 of the COMELEC Rules of Procedure, as amended by Resolution No. 9523. The subject sections read:

Section 2. Period to File Petition. — The Petition must be filed within five (5) days from the last day for filing of certificate of candidacy; but not later than twenty five (25) days from the time of filing of the certificate of candidacy subject of the Petition. In case of a substitute candidate, the Petition must be filed within five (5) days from the time the substitute candidate filed his certificate of candidacy.

X X X X

Section 4. Procedure to be observed. — Both parties shall observe the following procedure:

- The petitioner shall, before filing of the Petition, furnish a copy of the Petition, through personal service to the respondent. In cases where personal service is not feasible, or the respondent refuses to receive the Petition, or the respondents' whereabouts cannot be ascertained, the petitioner shall execute an affidavit stating the reason or circumstances therefor and resort to registered mail as a mode of service. The proof of service or the affidavit shall be attached to the Petition to be filed;[17]

Here, Hayudini filed his CoC on October 5, 2012, which was also the last day of filing of CoC for the May 13, 2013 elections. Omar, on the other hand, filed the subject petition only on March 26, 2013. Under the COMELEC Rules, a Petition to Deny Due Course or Cancel CoC must be filed within five days from the last day for filing a certificate of candidacy, but not later than twenty-five days from the time of filing of the CoC subject of the

petition. Clearly, Omar's petition was filed way beyond the prescribed period. Likewise, he failed to provide sufficient explanation as to why his petition was not served personally to Hayudini.

Notwithstanding the aforementioned procedural missteps, the Court sustains the COMELEC's liberal treatment of Omar's petition.

As a general rule, statutes providing for election contests are to be liberally construed in order that the will of the people in the choice of public officers may not be defeated by mere technical objections. Moreover, it is neither fair nor just to keep in office, for an indefinite period, one whose right to it is uncertain and under suspicion. It is imperative that his claim be immediately cleared, not only for the benefit of the winner but for the sake of public interest, which can only be achieved by brushing aside technicalities of procedure that protract and delay the trial of an ordinary action. This principle was reiterated in the cases of *Tolentino v. Commission on Elections*[18] and *De Castro v. Commission on Elections*,[19] where the Court held that "in exercising its powers and jurisdiction, as defined by its mandate to protect the integrity of elections, the COMELEC must not be straitjacketed by procedural rules in resolving election disputes." [20]

Settled is the rule that the COMELEC Rules of Procedure are subject to liberal construction. The COMELEC has the power to liberally interpret or even suspend its rules of procedure in the interest of justice, including obtaining a speedy disposition of all matters pending before it. This liberality is for the purpose of promoting the effective and efficient implementation of its objectives - ensuring the holding of free, orderly, honest, peaceful, and credible elections, as well as achieving just, expeditious, and inexpensive determination and disposition of every action and proceeding brought before the COMELEC. Unlike an ordinary civil action, an election contest is imbued with public interest. It involves not only the adjudication of private and pecuniary interests of rival candidates, but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate. And the tribunal has the corresponding duty to ascertain, by all means within its command, whom the people truly chose as their rightful leader.[21]

Indeed, Omar had previously filed a Petition to Deny Due Course or Cancel Hayudini's CoC on October 15, 2012, docketed as SPA No. 13-106(DC)(F). This was dismissed on January 31, 2013, or the same day the MCTC granted Hayudini's petition to be included in the list of voters. However, on March 8, 2013, the RTC reversed the MCTC ruling and, consequently, ordered the deletion of Hayudini's name in Barangay Bintawlan's permanent list of voters. Said deletion was already final and executory under the law.[22] Hayudini, however, still appealed the case to the CA, which was subsequently denied. Notably, thereafter, he went to the CA again, this time to file a petition for certiorari, docketed as CA-G.R. SP No. 05499.[23] In a Resolution dated July 9, 2013, the CA also denied said petition primarily because of Hayudini's act of engaging in the pernicious practice of forum shopping by filing two modes of appeal before said court.[24] Hence, by virtue of the finality of said RTC decision deleting his name from the voters' list, Hayudini, who had been previously qualified under the law[25] to run for an elective position, was then rendered ineligible.

Given the finality of the RTC decision, the same should be considered a valid supervening event. A supervening event refers to facts and events transpiring after the judgment or order had become executory. These circumstances affect or change the substance of the judgment and render its execution inequitable.[26] Here, the RTC's March 8, 2013 decision, ordering the deletion of Hayudini's name in the list of voters, which came after the dismissal of Omar's first petition, is indubitably a supervening event which would render the execution of the ruling in SPA No. 13-106(DC)(F) iniquitous and unjust. As the COMELEC aptly ruled, the decision to exclude Hayudini was still non-existent when the COMELEC first promulgated the Resolution in SPA No. 13-106(DC)(F) on January 31, 2013, or when the issues involved therein were passed upon.[27] The First Division even expressed that although the Election Registration Board (ERB) denied Hayudini's application for registration, it

could not adopt the same because it was not yet final as Hayudini was still to file a Petition for Inclusion before the MCTC.[28] Thus, it is not far-fetched to say that had this final RTC finding been existent before, the COMELEC First Division could have taken judicial notice of it and issued a substantially different ruling in SPA No. 13-106(DC)(F).[29]

The same ruling adequately equipped Omar with the necessary ground to successfully have Hayudini's CoC struck down. Under the rules, a statement in a certificate of candidacy claiming that a candidate is eligible to run for public office when in truth he is not, is a false material representation, a ground for a petition under Section 78 of the Omnibus Election Code.

Sections 74 and 78 read:

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 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.

The false representation mentioned in these provisions must pertain to a material fact, not to a mere innocuous mistake. A candidate who falsifies a material fact cannot run; if he runs and is elected, cannot serve; in both cases, he or she can be prosecuted for violation of the election laws. These facts pertain to a candidate's qualification for elective office, such as his or her citizenship and residence. Similarly, the candidate's status as a registered voter falls under this classification as it is a legal requirement which 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 local government under which he or she is running.[30] Even the will of the people, as expressed through the ballot, cannot cure the vice of ineligibility, especially if they mistakenly believed, as in the instant case, that the candidate was qualified.[31]

Aside from the requirement of materiality, a false representation under Section 78 must consist of a "deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible." Simply put, it must be made with a malicious intent to deceive the electorate as to the potential candidate's qualifications for public office.[32]

Section 74 requires the candidate to state under oath in his CoC "that he is eligible for said office." A candidate is eligible if he has a right to run for the public office. If a candidate is not actually eligible because he is not a registered voter in the municipality where he intends to be elected, but still he states under oath in his certificate of candidacy that he is eligible to run for public office, then the candidate clearly makes a false material representation, a ground to support a petition under Section 78.[33] It is interesting to note that Hayudini was, in fact, initially excluded by the ERB as a voter. On November 30, 2012, the ERB issued a certificate confirming the

disapproval of Hayudini's petition for registration.[34] This is precisely the reason why he needed to file a Petition for Inclusion in the Permanent List of Voters in Barangay Bintawlan before the MCTC. Thus, when he stated in his CoC that "he is eligible for said office," Hayudini made a clear and material misrepresentation as to his eligibility, because he was not, in fact, registered as a voter in Barangay Bintawlan.

Had the COMELEC not given due course to Omar's petition solely based on procedural deficiencies, South Ubian would have a mayor who is not even a registered voter in the locality he is supposed to govern, thereby creating a ridiculously absurd and outrageous situation. Hence, the COMELEC was accurate in cancelling Hayudini's certificate of candidacy.

Hayudini likewise protests that it was a grave error on the part of the COMELEC to have declared his proclamation null and void when no petition for annulment of his proclamation was ever filed. What petitioner seems to miss, however, is that the nullification of his proclamation as a winning candidate is also a legitimate outcome - a necessary legal consequence - of the cancellation of his CoC pursuant to Section 78. A CoC cancellation proceeding essentially partakes of the nature of a disqualification case.[35] The cancellation of a CoC essentially renders the votes cast for the candidate whose certificate of candidacy has been cancelled as stray votes.[36] If the disqualification or CoC cancellation or denial case is not resolved before the election day, the proceedings shall continue even after the election and the proclamation of the winner. Meanwhile, the candidate may be voted for and even be proclaimed as the winner, but the COMELEC's jurisdiction to deny due course and cancel his or her CoC continues. This rule likewise applies even if the candidate facing disqualification has already taken his oath of office.[37] The only exception to this rule is in the case of congressional and senatorial candidates where the COMELEC ipso jure loses jurisdiction in favor of either the Senate or the House of Representatives Electoral Tribunal after the candidates have been proclaimed, taken the proper oath, and also assumed office.[38]

It bears stressing that one of the requirements for a mayoralty candidate is that he must be a resident of the city or municipality where he intends to be elected. Thus, under Section 74 of the Omnibus Election Code, it is required that a candidate must certify under oath that he is eligible for the public office he seeks election. In this case, when petitioner stated in

his CoC that he is a resident of Barangay Bintawlan, South Ubian, Tawi Tawi and eligible for a public office, but it turned out that he was declared to be a non-resident thereof in a petition for his inclusion in the list of registered voters, he therefore committed a false representation in his CoC which pertained to a material fact which is a ground for the cancellation of his CoC under Section 78 of the Omnibus Election Code. Petitioner's ineligibility for not being a resident of the place he sought election is not a ground for a petition for disqualification, since the grounds enumerated under Section 68[39] of the Omnibus Election Code specifically refer to the commission of prohibited acts, and possession of a permanent resident status in a foreign country.

As held in *Aratea v. COMELEC*,[40] which is a case for cancellation of CoC under Section 78 of the Omnibus Election Code, a cancelled certificate of candidacy void ab initio cannot give rise to a valid candidacy, and much less to valid votes. Whether a certificate of candidacy is cancelled before or after the elections is immaterial, because the cancellation on such ground means he was never a candidate from the very beginning, his certificate of candidacy being void ab initio. We then found that since the winning mayoralty candidate's certificate of candidacy was void ab initio, he was never a candidate at all and all his votes were considered stray votes, and thus, proclaimed the second placer, the only qualified candidate, who actually garnered the highest number of votes, for the position of Mayor.

We find the factual milieu of the *Aratea* case applicable in the instant case, since this is also a case for a petition to

deny due course or cancel a certificate of candidacy. Since Hayudini was never a valid candidate for the position of the Municipal Mayor of South Ubian, Tawi-Tawi, the votes cast for him should be considered stray votes. Consequently, the COMELEC properly proclaimed Salma Omar, who garnered the highest number of votes in the remaining qualified candidates for the mayoralty post, as the duly-elected Mayor of South Ubian, Tawi Tawi.

Codilla v. De Venecia case has no application in this case, since it dealt with a petition for disqualification under Section 68 of the Omnibus Election Code and not a petition to deny due course or cancel certificate of candidacy under Section 78 which is the case at bar.

Finally, contrary to Hayudini's belief, the will of the electorate is still actually respected even when the votes for the ineligible candidate are disregarded. The votes cast in favor of the ineligible candidate are not considered at all in determining the winner of an election for these do not constitute the sole and total expression of the sovereign voice. On the other hand, those votes for the eligible and legitimate candidates form an integral part of said voice, which must equally be given due respect, if not more.^[41]

WHEREFORE, the petition is DISMISSED. The COMELEC Resolutions dated June 20, 2013 and July 10, 2013 are hereby AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and Leonen, JJ., concur.

Leonardo-De Castro, J., please see separate concurring and dissenting opinion.

Brion, J., see concurrence with separate concurring opinion.

[1] Rollo, pp. 4-47.

[2] Id. at 81-87.

[3] Id. at 48-51.

[4] Id. at 101.

[5] Id. at 90-97.

[6] Id. at 216-221.

[7] Id. at 149-156.

[8] Id. at 169-182.

[9] Id. at 157-166.

[10] Id. at 222-242.

[11] Id. at 81-87.

[12] Id. at 86.

[13] G.R. No. 195229, October 9, 2012, 683 SCRA 105.

[14] Rollo, pp. 50-51. (Emphasis in the original)

[15] Id. at 16-19. (Underscoring and emphasis omitted)

[16] *Beluso v. COMELEC*, G.R. No. 180711, June 22, 2010, 621 SCRA 450, 456.

[17] Emphasis supplied

[18] G.R. Nos. 187958, 187961, and 187962, April 7, 2010, 617 SCRA 575, 598.

[19] G.R. Nos. 187966-68, April 7, 2010, 617 SCRA 575, 598.

[20] *Violago v. COMELEC*, G.R. No. 194143, October 4, 2011, 658 SCRA 516, 525.

[21] *Id.*

[22] Omnibus Election Code, Sec. 138. Jurisdiction in inclusion and exclusion cases. - The municipal and metropolitan trial courts shall have original and exclusive jurisdiction over all matters of inclusion and exclusion of voters from the list in their respective municipalities or cities. Decisions of the municipal or metropolitan trial courts may be appealed directly by the aggrieved party to the proper regional trial court within five days from receipt of notice thereof, otherwise said decision of the municipal or metropolitan trial court shall become final and executory after said period. The regional trial court shall decide the appeal within ten days from the time the appeal was received and its decision shall be immediately final and executory. No motion for reconsideration shall be entertained by the courts. (Emphasis supplied)

[23] *Rollo*, pp. 421-440.

[24] *Id.* at 442-444.

[25] Republic Act No. 7160, 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

[26] *Javier v. Court of Appeals*, G.R. No. 96086, July 21, 1993.

[27] *Rollo*, p. 85.

[28] Resolution, SPA No. 13-106(DC)(F), January 31, 2013, p. 6.

[29] *Rollo*, p. 85.

[30] *Velasco v. COMELEC*, G.R. No. 180051, December 24, 2008, 575 SCRA 590, 603-604.

[31] *Limkaichong v. COMELEC*, G.R. Nos. 178831-32, 179120, 179132-33, and 179240-41, April 1, 2009, 583 SCRA 1, 38-39.

[32] *Velasco v. COMELEC*, *supra* note 30, at 604.

[33] *Jalosjos v. COMELEC*, G.R. No. 193237 and G.R. No. 193536, October 9, 2012, 683 SCRA 1, 2.

[34] *Rollo*, p. 128.

[35] *Velasco v. COMELEC*, *supra* note 30, at 612.

[36] Section 9 of Rule 23, COMELEC Rules of Procedure, as amended by Resolution No. 9523.

[37] *Velasco v. COMELEC*, *supra* note 30, at 613.

[38] Regina Ongsiako Reyes v. COMELEC, et al., G.R. No. 207264, June 25, 2013.

[39] Section 68. Disqualifications. - Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, subparagraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

[40] GR No. 195229, October 9, 2012, 683 SCRA 105, 145.

[41] Casan Macode Maquiling v. COMELEC, et al., G.R. No. 195649, April 16, 2013.

CONCURRING AND DISSENTING OPINION

LEONARDO-DE CASTRO, J.:

With all due respect to the Ponente of the decision in the above-quoted case, I concur in the disposition of the instant case affirming the resolution of the Commission on Elections (COMELEC) En Banc in so far as it affirmed the cancellation of petitioner Gamal S. Hayudini's Certificate of Candidacy (CoC) and the proclamation by COMELEC of Salma A. Omar as duly elected Mayor of South Ubian, Tawi-Tawi. I take exception, however, to the sweeping opinion in the ponencia that "whether a certificate of candidacy is cancelled before or after the elections is immaterial (to determine the validity of the votes cast), because the cancellation on such ground means he was never a candidate from the very beginning, his certificate of candidacy being void ab initio." On the contrary, by virtue of the provisions of Section 7 in relation to Section 6, both of Republic Act (R.A.) No. 6646, there should be a distinction in the treatment of votes cast where the petition for cancellation of the certificate of candidacy had been finally adjudicated before the election and where said petition remained pending during the election.

Hence, I do not agree with the opinion of Mr. Justice Arturo D. Brion that "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,"[1] and that in *Fermin v. Commission on Elections*,[2] the Court held that "Section 7 cannot be construed to refer to Section 6 which does not provide for a procedure but for the effects of disqualification, but can only refer to the procedure provided in Section 5 of [R.A. 6646] on nuisance candidates." This opinion is also anchored on the application, without qualification, of the aforementioned principle: that the cancellation of the certificate of candidacy renders it void ab initio, and if said cancellation takes effect after election, it should be given retroactive effect so as to nullify the votes cast for the ineligible candidate. I submit that the issue of whether Section 6 should be applied to a petition for cancellation of a certificate of candidacy pursuant to Section 7, particularly, in determining whether or not to consider stray the votes cast, should not be based on said technical ground, but should take into consideration the primordial principle that the sanctity of the expression of the people's will through the ballot must be preserved. Accordingly, the time of cancellation of the certificate of candidacy, whether it occurs before or after the election, is a material factor to consider in deciding whether to nullify the votes already cast. That is the intent and import of the language of Section 7 in relation to Section 6

which should be given effect.

Section 5 of R.A. No. 6646 provides for the Procedure in Cases of Nuisance Candidates. Whereas, Sections 6 and 7 of the same law read:

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 supplied)

Sec. 7. Petition to Deny Due Course To or Cancel a Certificate of Candidacy. - The procedure hereinabove provided shall apply to petitions to deny due course to or cancel a certificate of candidacy as provided in Section 78 of Batas Pambansa Big. 881 [The Omnibus Election Code]. (Emphasis supplied.)

With all due respect, the Court did not categorically resolve or decide in *Fermin* that "Section 7 cannot be construed to refer to Section 6" but merely quoted that part of the Dissenting Opinion of then Chief Justice Hilario G. Davide, Jr. in *Aquino v. Commission on Elections*.^[3] The issue in *Fermin* is the timeliness of the filing of the petition under Section 78 and not the effect of the pendency of the said petition during election day to the votes cast.

Fermin was a consolidation of two petitions for certiorari under Rule 64 in relation to Rule 65 of the Rules of Court, namely, G.R. No. 179695 and G.R. No. 182369, both filed by Mike A. Fermin to assail several resolutions of the COMELEC. Quoted verbatim hereunder are the relevant facts and findings of the Court in the two consolidated cases, to wit:

After the creation of Shariff Kabunsuan, the Regional Assembly of the Autonomous Region in Muslim Mindanao (ARMM), on November 22, 2006, passed Autonomy Act No. 205 creating the Municipality of Northern Kabuntalan in Shariff Kabunsuan. This new municipality was constituted by separating Barangays Balong, Damatog, Gayonga, Guiawa, Indatuan, Kapinpilan, P. Labio, Libungan, Montay, Sabaken and Tumaguinting from the Municipality of Kabuntalan.

Mike A. Fermin, the petitioner in both cases, was a registered voter of Barangay Payan, Kabuntalan. On December 13, 2006, claiming that he had been a resident of Barangay Indatuan for 1 year and 6 months, petitioner applied with the COMELEC for the transfer of his registration record to the said barangay. In the meantime, the creation of North Kabuntalan was ratified in a plebiscite on December 30, 2006, formally making Barangay Indatuan a component of Northern Kabuntalan.

Thereafter, on January 8, 2007, the COMELEC approved petitioner's application for the transfer of his voting record and registration as a voter to Precinct 21A of Barangay Indatuan, Northern Kabuntalan. On March 29, 2007, Fermin filed his Certificate of Candidacy (CoC) for mayor of Northern Kabuntalan in the May 14, 2007 National and Local Elections.

On April 20, 2007, private respondent Umbra Ramil Bayam Dilangalen, another mayoralty candidate, filed a Petition for Disqualification [the Dilangalen petition] against Fermin, docketed as SPA (PES) No. A07-003 [re-docketed as SPA No. 07-372 before the COMELEC] with the Office of the Provincial Election Supervisor of Shariff Kabunsuan. The petition alleged that the petitioner did not possess the period of residency required for candidacy and that he perjured himself in his CoC and in his application for transfer of voting record.

x x x x

Elections were held without any decision being rendered by the COMELEC in the said case. After the counting and canvassing of votes, Dilangalen emerged as the victor with 1,849 votes over Fermin's 1,640. The latter subsequently filed an election protest (Election Case No. 2007-022) with the Regional Trial Court (RTC), Branch 13 of Cotabato City.

The issues that the Court resolved in the consolidated cases were as follows:

- (1) Whether or not the Dilangalen petition is one under Section 68 or Section 78 of the OEC;
- (2) Whether or not it was filed on time;
- (3) Whether or not the COMELEC gravely abuse its discretion when it declared petitioner as not a resident of the locality for at least one year prior to the May 14, 2007 elections; and
- (4) Whether or not the COMELEC gravely abuse its discretion when it ordered the dismissal of Election Case No. 07-022 on the ground that Fermin had no legal standing to file the protest.[4] (Emphases supplied.)

In granting the petitions, the Court held in the consolidated cases that:

I.

Pivotal in the ascertainment of the timeliness of the Dilangalen petition is its proper characterization.

As aforesaid, petitioner, on the one hand, argues that the Dilangalen petition was filed pursuant to Section 78 of the OEC; while private respondent counters that the same is based on Section 68 of the Code.

After studying the said petition in detail, the Court finds that the same is in the nature of a petition to deny due course to or cancel a CoC under Section 78 of the OEC. The petition contains the essential allegations of a "Section 78" petition, namely: (1) the candidate made a representation in his certificate; (2) the representation pertains to a material matter which would affect the substantive rights of the candidate (the right to run for the election for which he filed his certificate); and (3) the candidate 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 which would otherwise render him ineligible. It likewise appropriately raises a question on a candidate's eligibility for public office, in this case, his possession of the one-year residency requirement under the law.

Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which may relate to the qualifications required of the public office he/she is running for. It is noted that the candidate states in his/her CoC that he/she is eligible for the office he/she seeks. Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office. If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate. Indeed, the Court has already likened a proceeding under Section 78 to a quo warranto proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a "Section 78" petition is filed before proclamation, while a petition for quo warranto is filed after proclamation of the winning candidate.

At this point, we must stress that a "Section 78" petition ought not to be interchanged or confused with a "Section 68" petition. They are different remedies, based on different grounds, and resulting in different eventualities. Private respondent's insistence, therefore, that the petition it filed before the COMELEC in SPA No. 07-372 is in the nature of a disqualification case under Section 68, as it is in fact captioned a "Petition for Disqualification," does not persuade the Court.

The ground raised in the Dilangalen petition is that Fermin allegedly lacked one of the qualifications to be

elected as mayor of Northern Kabuntalan, i.e., he had not established residence in the said locality for at least one year immediately preceding the election. Failure to meet the one-year residency requirement for the public office is not a ground for the "disqualification" of a candidate under Section 63. The provision only refers to the commission of prohibited acts and the possession of a permanent resident status in a foreign country as grounds for disqualification x x x.

x x x x

Likewise, the other provisions of law referring to "disqualification" do not include the lack of the one-year residency qualification as a ground therefor x x x.

x x x x

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

To emphasize, a petition for disqualification, on the one hand, can be premised on Section 12 or 68 of the OEC, or Section 40 of the LGC. On the other hand, a petition to deny due course to or cancel a CoC can only be grounded on a statement of a material representation in the said certificate that is false. The petitions also have different effects. While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all, as if he/she never filed a CoC. Thus, in *Miranda v. Abaya*, this Court made the distinction that a candidate who is disqualified under Section 68 can validly be substituted under Section 77 of the OEC because he/she remains a candidate until disqualified; but a person whose CoC has been denied due course or cancelled under Section 78 cannot be substituted because he/she is never considered a candidate.

In support of his claim that he actually filed a "petition for disqualification" and not a "petition to deny due course to or cancel a CoC," Dilangalen takes refuge in Rule 25 of the COMELEC Rules of Procedure x x x.

x x x x

We disagree. A COMELEC rule or resolution cannot supplant or vary the legislative enactments that distinguish the grounds for disqualification from those of ineligibility, and the appropriate proceedings to raise the said grounds. In other words, Rule 25 and COMELEC Resolution No. 7800 cannot supersede the dissimilar requirements of the law for the filing of a petition for disqualification under Section 68, and a petition for the denial of due course to or cancellation of CoC under Section 78 of the OEC x x x.

x x x x

Furthermore, the procedure laid down in the said Rule 25 of the COMELEC Rules of Procedure cannot be used in "Section 78" proceedings, precisely because a different rule, Rule 23, specifically governs petitions to deny due course to or cancel CoCs.

II.

Having thus determined that the Dilangalen petition is one under Section 78 of the OEC, the Court now declares that the same has to comply with the 25-day statutory period for its filing. *Aznar v. Commission on Elections* and *Loong v. Commission on Elections* give ascendancy to the express mandate of the law that "the petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy." Construed in relation to reglementary periods and the principles of prescription, the dismissal of "Section 78" petitions filed beyond the 25-day period must come as a matter of course.

We find it necessary to point out that Sections 5 and 7 of Republic Act (R.A.) No. 6646, contrary to the erroneous arguments of both parties, did not in any way amend the period for filing "Section 78" petitions. While Section 7 of the said law makes reference to Section 5 on the procedure in the conduct of cases for the denial of due course to the CoCs of nuisance candidates (retired Chief Justice Hilario G. Davide, Jr., in his

dissenting opinion in *Aquino v. Commission on Elections* explains that "the 'procedure hereinabove provided' mentioned in Section 7 cannot be construed to refer to Section 6 which does not provide for a procedure but for the effects of disqualification cases, [but] can only refer to the procedure provided in Section 5 of the said Act on nuisance candidates x .x x."), the same cannot be taken to mean that the 25-day period for filing "Section 78" petitions under the OEC is changed to 5 days counted from the last day for the filing of CoCs. The clear language of Section 78 certainly cannot be amended or modified by the mere reference in a subsequent statute to the use of a procedure specifically intended for another type of action. Cardinal is the rule in statutory construction that repeals by implication are disfavored and will not be so declared by the Court unless the intent of the legislators is manifest. In addition, it is noteworthy that *Loong*, which upheld the 25-day period for filing "Section 78" petitions, was decided long after the enactment of R.A. 6646. In this regard, we therefore find as contrary to the unequivocal mandate of the law, Rule 23, Section 2 of the COMELEC Rules of Procedure which states:

Sec. 2. Period to File Petition. -The petition must be filed within five (5) days following the last day for the filing of certificates of candidacy.

As the law stands, the petition to deny due course to or cancel a CoC "may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy."

Accordingly, it is necessary to determine when Fermin filed his CoC in order to ascertain whether the Dilangalen petition filed on April 20, 2007 was well within the restrictive 25-day period. If it was not, then the COMELEC should have, as discussed above, dismissed the petition outright.

The record in these cases reveals that Fermin filed his CoC for mayor of Northern Kabuntalan for the May 14, 2007 National and Local Elections on March 29, 2007. It is clear therefore that the petition to deny due course to or cancel Fermin's CoC was filed by Dilangalen well within the 25-day reglementary period. The COMELEC therefore did not abuse its discretion, much more gravely, when it did not dismiss the petition outright.

From the aforequoted decision, it cannot be categorically asserted that the Court has ruled that "Section 7 cannot be construed to refer to Section 6" of R.A. No. 6646. Justice Brion cannot definitely state, using as basis the case of *Fermin*, that my conclusion — that the instruction in Section 7 in relation to Section 6 of R.A. No. 6646 is that the effects of a disqualification case apply to petitions to deny due course to or cancel CoCs — is wrong. What the Court did in *Fermin* was merely "to point out that Sections 5 and 7 of Republic Act (R.A.) No. 6646, contrary to the erroneous arguments of both parties, did not in any way amend the period for filing 'Section 78' petitions." Admittedly, while the Court made mention therein that "Section 7 of the said law makes reference to Section 5 on the procedure in the conduct of cases for the denial of due course to the CoCs of nuisance candidates," the Ponente of the decision hastened to add that such statement was lifted from the Dissenting Opinion of then Chief Justice Hilario G. Davide, Jr. relative to the case of *Aquino v. Commission on Elections*.^[5] This portion of the decision in *Fermin* is an obiter dictum and in no way definitive of the resolution of the present case for the issues in *Fermin* are vastly dissimilar to this case.

Moreover, a close examination of the provisions of Sections 5 and 6 will show that both contain procedural rules, even if Section 6 is entitled "Effect of Disqualification Case." Note that Section 6 adverts to the continuation of the trial, hearing of the action, inquiry or protest and the filing of motion for suspension of the proceedings. Furthermore, if the intent is to limit the application of Section 7 to Section 5, Section 7 should have immediately followed Section 5 in order to exclude from its application Section 6. On the contrary, Section 7 refers to the procedure hereinabove provided. "Hereinabove" or above Section 7 are found Sections 5 and 6.

Hence, instead of relying on the dissenting opinion of former Chief Justice Davide, I subscribe to the validity of the majority opinion written by Mr. Justice Santiago M. Kapunan in *Aquino*, which stated that —

Petitioner conveniently confuses the distinction between an unproclaimed candidate to the House of Representatives and a member of the same. Obtaining the highest number of votes in an election does not automatically vest the position in the winning candidate. Section 17 of Article VI of the 1987 Constitution reads:

The Senate and the House of Representatives shall have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns and qualifications of their respective Members.

Under the above-stated provision, the electoral tribunal clearly assumes jurisdiction over all contests relative to the election, returns and qualifications of candidates for either the Senate or the House only when the latter become members of either the Senate or the House of Representatives. A candidate who has not been proclaimed and who has not taken his oath of office cannot be said to be a member of the House of Representatives subject to Section 17 of Article VI of the Constitution.

While the proclamation of a winning candidate in an election is ministerial, B.P. 881 in conjunction with Sec. 6 of R.A. 6646 allows suspension of proclamation under circumstances mentioned therein. Thus, petitioner's contention that "after the conduct of the election and (petitioner) has been established the winner of the electoral exercise from the moment of election, the COMELEC is automatically divested of authority to pass upon the question of qualification" finds no basis in law, because even after the elections the COMELEC is empowered by Section 6 (in relation to Section 7) of R.A. 6646 to continue to hear and decide questions relating to qualifications of candidates. Section 6 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 guilt is strong.

Under the above-quoted provision, not only is a disqualification case against a candidate allowed to continue after the election (and does not oust the COMELEC of its jurisdiction), but his obtaining the highest number of votes will not result in the suspension or termination of the proceedings against him when the evidence of guilt is strong. While the phrase "when the evidence of guilt is strong" seems to suggest that the provisions of Section 6 ought to be applicable only to disqualification cases under Section 68 of the Omnibus Election Code, SECTION 7 OF R.A. 6646 ALLOWS THE APPLICATION OF THE PROVISIONS OF SECTION 6 TO CASES INVOLVING DISQUALIFICATION BASED ON INELIGIBILITY UNDER SECTION 78 OF B.P. 881. Section 7 states:

Sec. 7. Petition to Deny Due Course or to Cancel a Certificate of Candidacy. — The procedure hereinabove provided shall apply to petition to deny due course to or cancel a certificate of candidacy based on Sec. 78 of Batas Pambansa 881.6 (Emphases supplied.)

Accordingly, I do not agree with the overly broad statement in the majority opinion and the concurring opinion of Justice Brion that the cancellation of the certificate of candidacy whether before or after the election is immaterial in determining the validity of the votes cast. The said statement or opinion, which in effect declines to abide with the mandate in Section 7 to apply Section 6 to a petition to deny due course to or cancel a certificate of candidacy, is based on the technical argument that when a person's certificate of candidacy is denied due course or cancelled, he is not to be considered a candidate. This technical ground may be properly applied in certain cases as where substitution is not allowed, such as when the cancellation takes place before election. However, it may not suffice to justify the nullification of the votes already cast before the certificate of candidacy is cancelled by final judgment. Whether it is disqualification or ineligibility, if votes were cast before final adjudication of

disqualification or ineligibility, there appears to be no justifiable reason to consider as stray the votes cast by the voters if in their honest belief they voted for a qualified or eligible candidate. The said voters should not be disenfranchised because of the unresolved petition for cancellation of a certificate of candidacy unless the ground for disqualification or ineligibility is of such notoriety that the voters can be considered to have deliberately squandered their votes for a disqualified or ineligible candidate. The nullification of the votes of those voters who were unaware of the disqualification or ineligibility of the person they voted for because of the unresolved petition for cancellation of the certificate of candidacy, which effectively disenfranchises them, cannot be justified on the excuse that the votes cast for the next ranking candidate are anyway to be considered as an expression of the sovereign will. It is for this reason that I do not agree to the resulting automatic disenfranchisement of the voters if the certificate of candidacy is cancelled after the election. Such consequence emanates from the undue interpretation that Section 7 should not be construed to allow the application of Section 6 to the petition for cancellation or denial of the certificate of candidacy, which interpretation is grounded principally on the theory that no certificate of candidacy means that there is no existing candidate. This will give precedence to technicality over substance, particularly, as it impacts on the sanctity of the vote of the electorate incognizant of the disqualification or ineligibility of the one they voted for.

However, except for its implication on the interpretation of the provisions of Sections 6 and 7 of R.A. No. 6646,¹ concur in the result of the ponencia of Justice Diosdado M. Peralta. This case may be likened to the *Aratea* case in so far as the decision of the Regional Trial Court ordering the deletion of Hayudini's name in Barangay Bintawlan's permanent list of voters, which rendered him ineligible to run for the position of mayor of South Ubian, was already final and executory before the election.

We can now apply the rule that a second placer is allowed to take the place of a disqualified winning candidate when two requisites concur, namely: (i) the candidate who obtained the highest number of votes is disqualified; and (ii) 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.⁷ And it is with the concurrence of the two requisites that the voting public 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.⁸ The finality of the RTC decision which definitely determined the ineligibility of Hayudini long before the election, the votes cast in his favor are considered stray and Salma A. Omar, the second placer, is deemed the duly elected Mayor of the Municipality of South Ubian, Tawi-Tawi.

[1] Separate Concurring Opinion, p. 12.

[2] 595 Phil. 449, 475 (2008).

[3] G.R. No. 120265, September 18, 1995, 248 SCRA 401.

[4] *Id.* at 464.

[5] 248 SCRA 400 (1995).

[6] *Aquino v. Commission on Elections*, supra note 3 at 417-419.

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

[8] *Labo, Jr. v. Commission on Elections*, G.R. No. 105111, July 3, 1992, 211 SCRA 297, 312.

SEPARATE CONCURRING OPINION

BRION, J.:

I concur with the result reached by the ponencia but submit this Separate Concurring Opinion to state my own views and observations on the propriety of the Commission on Elections' (Comelec) cancellation of the petitioner Gamal S. Hayudini's (Hayudini) Certificate of Candidacy (CoC) and its proclamation of the "second placer", Salma A. Omar (Salma) as the duly-elected Mayor of South Ubian, Tawi-Tawi.

On October 5, 2012, Hayudini filed his CoC for Mayor of South Ubian, Tawi-Tawi. On October 15, 2012, the respondent Mustapha Omar (Mustapha) filed a petition to deny due course or cancel Hayudini's CoC on the ground that the latter made a false representation in his residence.

On November 30, 2012, the Election Registration Board of South Ubian issued a certificate denying Hayudini's petition for registration prompting him to file a petition for inclusion in the permanent list of voters of Brgy. Bintawlan, South Ubian, Tawi-Tawi before the Municipal Circuit Trial Court (MCTC). The MCTC later granted Hayudini's petition.

On January 3, 2013, the Comelec issued a Resolution dismissing Omar's petition to cancel Hayudini's CoC for lack of evidence.

On March 8, 2013, the Regional Trial Court (RTC) on appeal issued its decision reversing the MCTC ruling and ordering the deletion of Hayudini's name in Brgy. Bintawlan's permanent list of voters. Under Section 138 of the Omnibus Election Code, the decision of the RTC on all cases of inclusion and exclusion of voters is final and executory.

On March 26, 2013, Mustapha filed a petition anew to cancel Hayudini's CoC on the basis of the final and executory RTC decision delisting his name from the permanent list of voters of Brgy. Bintawlan.

Meanwhile, on April 17, 2013, the Court of Appeals later denied Hayudini's appeal from the RTC decision on the ground that he initiated a wrong mode of appeal.

On May 13, 2013, the Municipal Board of Canvassers proclaimed Hayudini the duly elected Mayor of South Ubian, Tawi-Tawi with a majority of 3,148 votes as opposed to 2,264 votes garnered by the second placer Salma. Subsequently, Hayudini took his oath and assumed the office of Mayor of South Ubian, Tawi-Tawi.

On June 20, 2013, the Comelec Second Division issued a Resolution cancelling Hayudini's CoC. The Second Division held that the final and executory RTC Decision (that ordered the delisting of Hayudini's name from the permanent list of voters of Brgy. Bintawlan) is a supervening event that if disregarded, would render the execution of its January 3, 2013 Resolution unjust. It ruled that Hayudini can no longer run for mayor of South Ubian, Tawi-Tawi as he is no longer a registered voter of the municipality. Thus, the Second Division concluded that the final and executory judgment also amounts to a notice to the Comelec that Hayudini is not a candidate for purposes of the May 13, 2013 elections; his CoC is void ab initio which cannot give rise to a valid candidacy much less to valid votes.

On July 10, 2013, the Comelec en banc affirmed the Second Division ruling cancelling Hayudini's CoC by virtue of the final and executory RTC Decision excluding his name in the voter's list. It emphasized that even if the cancellation of Hayudini's CoC was not declared by final judgment before the elections and that Hayudini garnered the highest number of votes, the Comelec citing Section 7 in relation to Section 6 of RA 6646 held that it

had the jurisdiction to annul his proclamation as the proclamation itself was null and void. Citing the Court's dicta in *Efren Racel Aratea v. Commission on Elections, et al.*,^[1] that a cancelled CoC cannot give rise to a valid candidacy much less to a valid vote, the Comelec annulled Hayudini's proclamation and proclaimed Salma the duly elected mayor of South Ubian, being the qualified candidate obtaining the highest number of votes.

I concur with the ponencia's (i) position that Hayudini committed a false representation as to his eligibility (because he was not a registered voter of Barangay Bintawlan, South Ubian, Tawi-Tawi), thus his CoC was void ab initio, the effect of which retroacts to the date of the filing of his CoC and (ii) conclusion that Salma, the "second placer" in the 2013 elections for the mayoralty post of South Ubian, Tawi-Tawi, should be the rightful mayor.

I submit that ground cited in Mustapha's petition to deny due course or cancel CoC was appropriate for the cancellation of Hayudini's CoC. Thus, the present case should be resolved under the rules of cancellation of CoC and not from the point of disqualification that Justice De Castro advocates.

I wish to reiterate in this Separate Concurring Opinion, as I did in the allied cases of *Efren Racel Aratea v. Commission on Elections, et al.*,^[2] *Mayor Barbara C. Talaga v. Commission on Elections, et al.*,^[3] and *Dominador G. Jalosjos, Jr. v. Commission on Elections, et al.*,^[4] that the present case should be resolved from an analytical approach that starts from a consideration of the nature of a CoC; the distinctions between eligibility or lack of it and disqualification; the effects of cancellation and disqualification; and the applicable remedies.

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*,^[5] 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 (Local Government Code or LGC)*, *B.P. Blg. 881 (Omnibus Election Code or OEC)* and, later, *Republic Act (R.A.) No. 7160 (Local Government Code of 1991 or LGC 1991)*.^[6]

Under Section 79 of the OEC, a political aspirant legally becomes a "candidate" only upon the due filing of his sworn CoC.^[7] 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"^[8] – 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"^[9] filed.

COMELEC Resolution No. 8678 provides what a CoC must contain or state:^[10]

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 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, 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.”[11]

Pertinent laws[12] 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,”[13] bearing in mind that the limitations on the privilege to seek public office are within the plenary power of Congress to provide.[14]

The Concept of Disqualification vis-a-vis
Remedy of Cancellation; and Effects of

Disqualification.

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.[15] 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 (Section 74 of the OEC) 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.[16]

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 applicable to specific individuals 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 those positive 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.

While the violation of the three-term rule is properly a ground for disqualification, it is a unique ground, constitutionally anchored at that, that sets it apart from and creates a distinction even from the ordinary grounds of disqualification. The succeeding discussions incorporate these intra-disqualification distinctions on the grounds for disqualification, which in sum refer to (i) the period to file a petition and (ii) capability of substitution and (iii) on the application of the doctrine of rejection of second placer and the doctrine’s exceptions.

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;^[17] the governing provisions are Sections 78 and 69 of the OEC.^[18]

In a disqualification case, as mentioned above, the grounds are traits, conditions, characteristics or acts of

disqualification,[19] individually applicable to a candidate, as provided under Sections 68 and 12 of B.P. Blg. 881; 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 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.

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.[20]

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.[21] 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*,[22] 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.[23] 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.[24]

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.[25] 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.[26] 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.[27] After this period, generally no other person may join the election contest. A notable exception to this general rule is the rule on substitution. The application of the exception, however, presupposes a valid CoC. 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.[28] 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; substitution can thus take place under the terms of Section 77 of the OEC.[29] 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.[30]

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.[31] 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.[32]

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.

The Above Rulings and Principles as Applied to the Present Case

I agree with the ponencia that the Comelec properly cancelled Hayudini’s CoC. It is apparent from the undisputed facts that Mustapha did indeed file a petition for denial and/or the cancellation of Hayudini’s CoC. It is also obvious, based on the above discussions, that the ground he cited was appropriate for the cancellation of Hayudini’s CoC. The main ground of the said petition is that Hayudini committed dishonesty in declaring that he was a registered voter of Barangay Bintawlan, South Ubian, Tawi-Tawi, when in fact he was not. As the Court held in *Munder v. Commission on Elections*,[33] this ground is appropriate for a petition to deny due course or to cancel CoC, thus:

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

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

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

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

The ground raised in the Dilangalen petition is that Fermin allegedly lacked one of the qualifications to be elected as mayor of Northern Kabuntalan, i.e., he had not established residence in the said locality for at least one year immediately preceding the election. Failure to meet the one-year residency requirement for the public office is not a ground for the “disqualification” of a candidate under Section 68. The provision only refers to

the commission of prohibited acts and the possession of a permanent resident status in a foreign country as grounds for disqualification....

...

To emphasize, a petition for disqualification, on the one hand, can be premised on Section 12 or 68 of the [Omnibus Election Code], or Section 40 of the [Local Government Code]. On the other hand, a petition to deny due course to or cancel a CoC can only be grounded on a statement of a material representation in the said certificate that is false. The petitions also have different effects. While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all, as if he/she never filed a CoC.

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

A COMELEC rule or resolution cannot supplant or vary the legislative enactments that distinguish the grounds for disqualification from those of ineligibility, and the appropriate proceedings to raise the said grounds. In other words, Rule 25 and COMELEC Resolution No. 7800 cannot supersede the dissimilar requirements of the law for the filing of a petition for disqualification under Section 68, and a petition for the denial of due course to or cancellation of CoC under Section 78 of the OEC.

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

It is thus clear that the ground invoked by Sarip in his Petition for Disqualification against Munder - the latter's alleged status as unregistered voter in the municipality - was inappropriate for the said petition. The said ground should have been raised in a petition to cancel Munder's CoC. [emphasis ours]

As mentioned above, considering that the cited ground is appropriate for cancellation of CoC case, it logically and necessarily follows that the question of who is the duly elected Mayor of South Ubian, Tawi-Tawi should be resolved under the rules of cancellation of CoC and not from the rules of disqualification proposed by Justice De Castro.

Justice De Castro espouses the view that Section 6[34] (on the effects of disqualification) in relation to Section 7 (on a petition to deny due course to or cancel a CoC)[35] of RA 6646 should be applied in this case so that the permanent vacancy in the office of mayor of South Ubian (as a result of the cancellation of Hayudini's CoC) should be filled pursuant to the rules of succession under Section 44 of the Local Government Code.

I disagree with this position.

In *Fermin v. Commission on Elections*, [36] the Court held that Section 7 cannot be construed to refer to Section 6 which does not provide for a procedure but for the effects of disqualification, but can only refer to the procedure provided in Section 5 of RA 6646 on nuisance candidates. The Court in *Fermin* cited Chief Justice Davide's dissenting opinion in *Aquino v. Commission on Elections*, [37] viz:

Second, even if we assume for the sake of argument that the petition in SPA No. 95-113 fall under Section 78 of the Omnibus Election Code, still Section 6 of R.A. No. 6646 cannot be applied by virtue of Section 7 thereof. Sections 6 and 7 reads:

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

Sec. 7. Petition to Deny Due Course to or Cancel a Certificate of Candidacy. — The procedure hereinabove provided shall apply to petitions to deny due course to or cancel a certificate of candidacy as provided in Section 78 of Batas Pambansa Blg. 881.

The "procedure hereinabove provided" mentioned in Section 7 cannot be construed to refer to Section 6 which does not provide for a procedure but for the EFFECTS of disqualification cases. It can only refer to the procedure provided in Section 5 of the said Act on nuisance candidates which reads as follows:

Sec. 5. Procedure in Cases of Nuisance Candidates. — A verified petition to declare a duly registered candidate as a nuisance candidate under Section 69 of Batas Pambansa Blg. 881 shall be filed personally or through duly authorized representative with the Commission by any registered candidate for the same office within five (5) days from the last day for the filing of certificates of candidacy. Filing by mail shall not be allowed.

(b) Within three (3) days from the filing of the petition, the Commission shall issue summons to the respondent candidate together with a copy of the petition and its enclosures, if any.

(c) The respondent shall be given three (3) days from receipt of the summons within which to file his verified answer (not a motion to dismiss) to the petition, serving copy thereof upon the petitioner. Grounds for a motion to dismiss may be raised as affirmative defenses.

(d) The Commission may designate any of its officials who are lawyers to hear the case and receive evidence. The proceeding shall be summary in nature. In lieu of oral testimonies, the parties may be required to submit position papers together with affidavits or counter-affidavits and other documentary evidence. The hearing officer shall immediately submit to the Commission his findings, reports, and recommendations within five (5) days from the completion of such submission of evidence. The Commission shall render its decision within five (5) days from receipt thereof.

(e) The decision, order, or ruling of the Commission shall, after five (5) days from receipt of a copy thereof by the parties, be final and executory unless stayed by the Supreme Court.

(f) The Commission shall within twenty-four hours, through the fastest available means, disseminate its decision or the decision of the Supreme Court or the city or municipal election registrars, boards of election inspectors, and the general public in the political subdivision concerned.

and which is the only procedure that precedes Section 7 of the said Act. Heretofore, no law provided for the procedure to govern cases under Section 78. Applying to such cases, through Section 7 of R.A. No. 6646, the procedure applicable to cases of nuisance candidates is prudent and wise, for both cases necessarily require that they be decided before the day of the election; hence, only summary proceedings thereon can adequately respond to the urgency of the matter.

Third, Section 6 merely supplements Section 72 of the Omnibus Election Code providing as follows:

Sec. 72. Effects of disqualification cases and priority. — The Commission and the courts shall give priority to cases of disqualification by reason of violation of this Act to the end that a final decision shall be rendered not later than seven days before the election in which the disqualification is sought.

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. Nevertheless, 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, his violation of the provisions of the preceding sections shall not prevent his proclamation and assumption to office.

by granting the COMELEC or the Court the authority to continue hearing the case and to suspend the proclamation if the evidence of guilt is strong. As observed by this Court in its majority "the phrase 'when the evidence of guilt is strong' seems to suggest that the provisions of Section 6 ought to be applicable only to disqualification cases under Section 68 of the Omnibus Election Code." [Emphases ours]

Based on these considerations, I find it clear that Section 6 of RA 6646 is only applicable to disqualification cases under Section 68 of the Omnibus election Code and not to cancellation of CoC cases under Section 78 of the same Code. At the risk of repetition, Section 7 cannot be construed to refer to Section 6 (which does not provide for a procedure but for the effects of disqualification), but can only refer to the procedure provided in Section 5 of RA 6646 on nuisance candidates. Thus, Justice De Castro's conclusion that "the instruction in Section 7 in relation to Section 6 of RA 6646 is that, the effect/s of a disqualification case is made to apply to petitions to deny due course to or cancel CoCs" is wrong.

To be sure, the application of the effects of disqualification under Section 6 of RA 6646 in the present case would be tenable if the petition is one for disqualification. However, the pertinent allegations of Mustapha's petition clearly show that the same is actually a petition for cancellation of CoC, the effect of which is not covered by Section 6 of RA 6646, which repealed Section 72 of the Omnibus Election Code cited above.

I emphasize that unlike a judgment on a petition to cancel a CoC, the effects of a judgment on a petition for disqualification distinguish whether the same attained finality before or after elections. If the judgment became final before the elections, the effect is identical to that of cancellation of a CoC. If, however, the judgment attained finality after the elections, the candidate is still considered an official candidate and may even be proclaimed the winner should he or she garner the majority votes in the elections. Clearly, these crucial distinctions between the effects of cancellation of a CoC and disqualification would be for naught if we adopt Justice De Castro's view that Section 6 of RA 6646 should be made applicable to cancellation of CoC cases.

In the present case, Hayudini, whose CoC was denied due course or cancelled is not considered a candidate at all; the votes in his favor are considered votes for an inexistent candidate or for one who is deemed not to be in the ballot. The second placer (which is legally a misnomer), Salma should be proclaimed the winner as the candidate with the highest number of votes for the mayoralty post of South Ubian, Tawi-Tawi. That Hayudini's CoC cancellation case became final after the elections is of no moment since the cancellation of his CoC retroacts to the date of the filing of the CoC; it signifies non-candidacy from the very start, i.e., from before the elections.

In these lights, I vote to dismiss the petition.

[1] G.R. No. 195229, October 9, 2012, 683 SCRA 105

[2] Id.

[3] G.R. Nos. 196804 and 197015, October 9, 2012, 683 SCRA __

[4] G.R. No. 193237, October 9, 2012, 683 SCRA __

[5] 373 Phil. 896, 908 (1999).

[6] 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).

[7] 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.

[8] Section 73 of B.P. Blg. 881 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)*

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

[10] The statutory basis is Section 74 of B.P. Blg. 881 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.

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

[12] Section 13 of R.A. No. 9369, COMELEC Resolution No. 8678 and Section 78 of B.P. Blg. 881.

[13] 1987 Constitution, Article II, Section 26.

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

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

[16] 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.

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

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

[19] Sections 68 and 12 of B.P. Blg. 881 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.

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

[21] *Lonzanida v. Commission on Elections*, G.R. No. 135150, July 28, 1999, 311 SCRA 602; *Borja, Jr. v. Commission on Elections*, 295 Phil. 157 (1998); *Socrates v. COMELEC*, 440 Phil. 107 (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; and *Aldovino, Jr. v. Commission on Elections*, G.R. No. 184836, December 23, 2009, 609 SCRA 234..

[22] *Supra* note 23, at 386-389.

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

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

[25] 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

1. A verified petition to disqualify a candidate pursuant to Section 68 of the OEC and the verified petition to disqualify a candidate for lack of qualifications or possessing some grounds for disqualification may be filed on any day after the last day for filing of certificates of candidacy but not later than the date of proclamation[.]

[26] Section 253 of the OEC.

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

[28] *Miranda v. Abaya*, supra note 14, at 658-660.

[29] Section 77 of B.P. Blg. 881 expressly allows substitution of a candidate who is “disqualified for any cause.”

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

[31] *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.

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

[33] G.R. No. 194076 & 194160, October 19, 2011.

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

[35] Section 7. Petition to Deny Due Course To or Cancel a Certificate of Candidacy. - The procedure hereinabove provided shall apply to petitions to deny due course to or cancel a certificate of candidacy as provided in Section 78 of Batas Pambansa Blg. 881.

[36] G.R. No. 179695 & 182639, December 18, 2008.

[37] G.R. No. 120265, September 18, 1995, 248 SCRA 400, 448.

ABOUT BATAS.ORG

Study smarter at BATAS.org

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

The complete Philippine law library - free for everyone.

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

Audio case-brief lectures.

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

Bar review built on the science of memory.

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

The full law-school curriculum.

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

Mock exams that tell you where you stand.

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

A study planner that keeps you on pace.

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

Start free at <https://batas.org>

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

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

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