

BENJAMIN T. LOONG, PETITIONER, VS. COMMISSION ON ELECTIONS, NURHUSSEIN UTUTALUM AND ALIM BASHIR EDRIS, RESPONDENTS.

G.R. No. 93986. December 22, 1992

Ponente: PADILLA, J.

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PADILLA, J.:

In this special civil action of certiorari, petitioner assails the Resolution dated 15 May 1990 of the Commission on Elections (Second Division), issued in SPA No. 90-006 entitled “Nur Hussein Ututalum, petitioner vs. Benjamin Loong, respondent,” a petition to disqualify Benjamin Loong, candidate for Regional Vice-Governor of the Autonomous Government in Muslim Mindanao. Said assailed resolution ruled that the respondent Commission has jurisdiction to hear and decide SPA No. 90-006.

On 15 January 1990, petitioner filed with the respondent Commission his certificate of candidacy for the position of Vice-Governor of the Mindanao Autonomous Region in the election held on 17 February 1990 (15 January 1990 being the last day for filing said certificate); herein two (2) private respondents (Ututalum and Edris) were also candidates for the same position.

On 5 March 1990 (or 16 days after the election), respondent Ututalum filed before the respondent Commission (Second Division) a petition (docketed as SPA Case No. 90-006) seeking to disqualify petitioner for the office of Regional Vice-Governor, on the ground that the latter made a false representation in his certificate of candidacy as to his age.

On 7 March 1990, the other candidate, respondent Edris, filed a “Petition in Intervention” in the said SPA No. 90-006, raising therein issues similar to those raised by respondent Ututalum in his main petition.

On 19 March 1990,[1] petitioner Loong filed in SPA No. 90-006 his answer to the petition, seeking the dismissal of the petition, and alleging the following:

1. that it has not been the practice among the Muslim people in the community where respondent was born to record the birth of a child with the Office of the Civil Registry; that following such practice, respondent's parents did not also record his birth with the said office; that, to be sure of his age qualification, respondent, before filing his certificate of candidacy consulted his mother and other persons who have personal knowledge of his date of birth and all assured respondent that his correct date of birth is July 4, 1954.
2. that respondent COMELEC has no jurisdiction because such petition is actually one which is to deny due course to or cancel a certificate of candidacy which, under Section 78 of the Omnibus Election Code (BP 881), as amended by Election Reforms Law of 1987, should have been filed within 5 days following the last day for filing of the certificate of candidacy.

On 30 March 1990, petitioner Loong also filed his “Answer to Petition for Intervention.”[2]

On 15 May 1990, the respondent Commission (Second Division) rendered the now assailed Resolution[3] (with

two (2) Commissioners - Yorac and Flores concurring, and one Commissioner - Dimaampao dissenting), holding that:

“WHEREFORE, on the basis of the foregoing, the Commission on Elections (Second Division) holds that it has jurisdiction to try the instant petition and the respondent's motion to dismiss on the ground of lack of jurisdiction is hereby denied.”

In its questioned resolution, respondent Commission held that, in consonance with the ruling of this Court in *Frivaldo vs. COMELEC*[4] to wit -

“The qualifications prescribed for elective office cannot be erased by the electorate alone. The will of the people as expressed through the ballot cannot cure the vice of ineligibility, especially if they mistakenly believed, as in this case, that the candidate was qualified.”

Sections 6 and 7 of Rep. Act No. 6646[5] (in relation to the said *Frivaldo* ruling) should now mean that:

“1. When there is an allegation of falsification of an entry in a candidate's certificate of candidacy, and such alleged falsification refers to a fact concerning the candidate's eligibility to run for and hold an elective public office, a petition to declare such candidate ineligible is seasonable if it is brought within a reasonable time of the discovery of ineligibility.

2. Such petition for a declaration of ineligibility is seasonable even if filed after the period prescribed by law for attacking certificate of candidacy and before the proclamation of the candidate sought to be disqualified. The substantive issue of qualification cannot be subordinated to or defeated by the gap in procedural rules. x x x”[6]

Denying petitioner's motion for reconsideration of the above-cited resolution, the respondent Commission issued Resolution dated 3 July 1990,[7] stating among others that -

“While the *Frivaldo* case referred to the question of respondent's citizenship, we hold that the principle applies to discovery of violation of other requirements for eligibility, such as for instance the fact that a candidate is a holder of a green card or other certificates of permanent residence in another country, or, as in this case, that the candidate does not possess the age qualification for the office.”

On 3 July 1990, petitioner was proclaimed as the duly elected Vice-Governor of the Mindanao Autonomous Region.[8] Hence, this special civil action of certiorari filed by petitioner on 9 July 1990 to annul the aforesaid resolutions of respondent Commission dated 15 May 1990 and 3 July 1990, issued in SPA No. 90-006.

The principal issue in the case at bar, as we see it, is whether or not SPA No. 90-006 (a petition to cancel the certificate of candidacy of petitioner Loong) was filed within the period prescribed by law.

The undisputed facts are as follows: petitioner Loong filed his certificate of candidacy on 15 January 1990 (the last day for filing the same), the election for officials of the Muslim Mindanao Autonomous Region being on 17 February 1990; but private respondent Ututalum filed the petition (SPA 90-006) to disqualify-candidate Loong only on 5 March 1990, or forty-nine (49) days from the date Loong's certificate of candidacy was filed (i.e. 15 January 1990), and sixteen (16) days after the election itself.

Petitioner Loong contends that SPA No. 90-006 was filed out of time because it was filed beyond the 25-day period prescribed by Section 76 of the Omnibus Election Code. On the other hand, private respondent Ututalum alleges that SPA No. 90-006, though filed only on 5 March 1990, was filed when no proclamation of winner had as yet been made and that the petition is deemed filed on time as Section 3, Rule 25 of the Comelec Rules of Procedure states that the petition to disqualify a candidate on grounds of ineligibility “shall be filed any day after the last day for filing of certificates of candidacy but not later than the date of proclamation.”

On the part of respondent Commission, it held in its assailed resolution that the petition in SPA No. 90-006 was timely filed, applying Sections 6 and 7 of Republic Act No. 6646,[9] and Section 2, Rule 23 of the Comelec Rules of Procedure which states that the petition to deny due course to or cancel a certificate of candidacy must be filed within five (5) days following the last day for the filing of a certificate of candidacy, both read in the light of the Frivaldo ruling of this Court.

We find the present petition to be meritorious.

Sections 3 and 4 of Rep. Act No. 6734 (entitled, “An act providing for an organic act for the autonomous region in Muslim Mindanao”) requires that the age of a person running for the office of Vice Governor for the autonomous region shall be at least thirty-five (35) years on the day of the election. Private respondent Ututalum alleges that petitioner Loong falls short of this age requirement, hence, on 5 March 1990, he filed a petition to disqualify the petitioner.

Section 74 of the Omnibus Election Code (“Code” for brevity) provides that the certificate of candidacy of the person filing it shall state, among others, the date of birth of said person. Section 78 of the same Code states that in case a person filing a certificate of candidacy has committed false representation, a petition to cancel the certificate of the aforesaid person may be filed within twenty-five (25) days from the time the certificate was filed.

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

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

Rule 25 of the Comelec Rules of Procedure refers to Disqualification of Candidates; and Section 1 of said rule provides that any candidate who commit any act declared by law to be a ground for disqualification may be disqualified from continuing as a candidate. The grounds for disqualification as expressed in Sections 12 and 68 of the Code are the following:

“SEC. 12. Disqualification. - Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he was sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.”

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

The petition filed by private respondent Ututalum with the respondent Comelec to disqualify petitioner Loong on

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

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

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

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

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

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

We note that Section 6 refers only to the effects of a disqualification case which may be based on grounds other than that provided under Section 78 of the Code. But Section 7 of Rep. Act No. 6646 also makes the effects referred to in Section 6 applicable to disqualification cases filed under Section 78 of the Code. Nowhere in Sections 6 and 7 of Rep. Act No. 6646 is mention made of the period within which these disqualification cases may be filed. This is because there are provisions in the Code which supply the periods within which a petition relating to disqualification of candidates must be filed, such as Section 78, already discussed, and Section 253 on petitions for quo warranto.

Thus, if a person qualified to file a petition to disqualify a certain candidate fails to file the petition within the 25-day period prescribed by Section 78 of the Code for whatever reasons, the election laws do not leave him completely helpless as he has another chance to raise the disqualification of the candidate by filing a petition for quo warranto within ten (10) days from the proclamation of the results of the election, as provided under Section 253 of the Code. Section 1 Rule 21 of the Comelec Rules of Procedure similarly provides that any voter contesting the election of any regional, provincial or city official on the ground of ineligibility or of disloyalty to the Republic of the Philippines may file a petition for quo warranto with the Electoral Contest Adjudication Department. The petition may be filed within ten (10) days from the date the respondent is proclaimed (Section 2).

It is true that the discovery of false representation as to material facts required to be stated in a certificate of

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

At the same time, it can not be denied that it is the purpose and intent of the legislative branch of the government to fix a definite time within which petitions or protests related to eligibility of candidates for elective offices must be filed,[10] as seen in Sections 78 and 253 of the Code. Respondent Commission may have seen the need to remedy this so-called “procedural gap”, but it is not for it to prescribe what the law does not provide, its function not being legislative. The question of whether the time to file these petitions or protests is too short or ineffective is one for the Legislature to decide and remedy.

We are aware that in *Erivaldo vs. Comelec*,[11] this Court held that a petition to disqualify an elective official, on the ground that he is not a Filipino citizen, may be filed at anytime, even beyond the period prescribed by law, and even if he had already been proclaimed elected to the office and in fact had long been discharging the duties of said office. But we disagree with respondent Commission that the *Erivaldo* ruling applies to the case at bar in all its connotations and implications. For one, the ground for which disqualification is sought in the present case is misrepresentation as to the required age of the candidate, whereas, in *Erivaldo* the ground for disqualification was lack of Philippine citizenship. This is an overriding and fundamental desideratum matched perhaps only by disloyalty to the Republic of the Philippines.

Mr. Justice Gutierrez, Jr., in his concurring opinion in *Erivaldo vs. Comelec*[12] said:

“It is an established rule of long standing that the period fixed by law for the filing of a protest - whether quo warranto or election contest - is mandatory and jurisdictional.

“As a rule, the quo warranto petition seeking to annul the petitioner's election and proclamation should have been filed within ten days after the proclamation of election results. The purpose of the law in not allowing the filing of protests beyond the period fixed by law is to have a certain and definite time within which petitions against the results of an election should be filed and to provide summary proceedings for the settlement of such disputes.

x x x x x

“I must emphasize, however, that my concurrence is limited to a clear case of an alien holding an elective public office. And perhaps in a clear case of loyalty to the Republic of the Philippines. Where the disqualification is based on age, residence, or any of the many grounds for ineligibility, I believe that the ten-day period should be applied strictly.”

In *Aznar vs. Comelec*,[13] the records show that private respondent filed his certificate of candidacy on 19 November 1987 and that the petitioner filed his petition for disqualification of said private respondent on 22 January 1988. Since the petition for disqualification was filed beyond the twenty five-day period required in Section 78 of the Code, it was clear that said petition had been filed out of time. The Court also ruled that the petition for the disqualification of private respondent could not also be treated as a petition for quo warranto

under Section 253 of the same Code as it was unquestionably premature, considering that private respondent was proclaimed Provincial Governor of Cebu only on 3 March 1988. However, as a matter of public interest to ascertain the respondent's citizenship and qualification to hold the public office to which he had been proclaimed elected, the Court ruled on the merits of the case.

But the Court, in another case, in an EN BANC Resolution[14] affirmed the dismissal by the COMELEC of the petitions for disqualification. It appeared that on 2 March 1990, a petition to disqualify Padilla Pundaodaya (SPA No. 90-004) was filed because of an allegedly falsified certificate of candidacy which he could not have personally filed on 15 January 1990 since he had been in Saudi Arabia since 24 July 1987 and arrived in Manila only on 24 January 1990. The Court held that the disqualification petition was correctly treated by the Commission on Elections as a petition to cancel a defective certificate of candidacy but the petition was filed out of time and could not anymore be entertained.

In sum, SPA No. 90-006 was filed by private respondent Ututalum beyond the 25-day period (from the filing by petitioner Loong of the questioned certificate of candidacy) prescribed by Section 78 of the Code. It follows that the dismissal of said petition for disqualification is warranted. Further it would appear that we can not treat SPA No. 90-006 as a petition for quo warranto (Section 253 of the Code) for when it was filed with the respondent Commission, no proclamation of election results had as yet been made, hence, it was premature.

WHEREFORE, the petition is GRANTED. The resolutions of respondent Commission, dated 15 May 1990 and 3 July 1990, rendered in SPA No. 90-006 are hereby SET ASIDE.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Feliciano, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, and Campos, Jr., JJ., concur.

[1] Rollo, p. 67

[2] Rollo, p. 75

[3] Rollo, p. 22

[4] G.R. No. 87193, June 23, 1989, 174 SCRA 245

[5] The Electoral Reforms Law of 1987 approved on January 5, 1988

[6] Rollo, pp. 23-24

[7] Rollo, p. 30

[8] Rollo, p. 10

[9] Sections 6 and 7 of Rep. Act No. 6646 provide that:

“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.”

[10] Municipality of Masantol vs. Guevarra, 44 Phil. 580 (1963)

[11] 174 SCRA 245

[12] Ibid., pp. 256-258

[13] G.R. No. 83820, May 25, 1990, 185 SCRA 703

[14] Dr. Tocod D. Macaraya, et al. vs. The Commission on Elections, et al., G.R. No. 93404; Zorayda Y.A. Tamano, et al. vs. COMELEC, et al., G.R. No. 93405, August 2, 1990

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