

EDGARDO C. NOLASCO, PETITIONER, VS. COMMISSION ON ELECTIONS, MUNICIPAL BOARD OF CANVASSERS, MEYCAUAYAN, BULACAN, AND EDUARDO A. ALARILLA, RESPONDENTS. FLORENTINO P. BLANCO, PETI...

G.R. Nos. 122250 & 122258. July 21, 1997

Ponente: PUNO, J.

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PUNO, J.:

First, we rewind the facts. The election for mayor of Meycauayan, Bulacan was held on May 8, 1995. The principal protagonists were petitioner Florentino P. Blanco and private respondent Eduardo A. Alarilla. Blanco received 29,753 votes, while Alarilla got 23,038 votes.[1] Edgardo Nolasco was elected Vice-Mayor with 37,240 votes.

On May 9, 1995, Alarilla filed with the COMELEC a petition to disqualify Blanco. He alleged:

“x x x x x x x x

“4. Based on intelligence reports that respondent was maintaining his own `private army' at his aforesaid resident, P/Insp. Ronaldo O. Lee of the Philippine National Police assigned with the Intelligence Command at Camp Crame, applied for and was granted search warrant no. 95-147 by Branch 37 of the Regional Trial Court of Manila on 5 May 1995. A copy of the said search warrant is attached as Annex "A" hereof.

5. In compliance with said search warrant no. 95-147, an elite composite team of the PNP Intelligence Command, Criminal Investigation Service (CIS), and Bulacan Provincial Command, backed up by the Philippine National Police Special Action Force, accompanied by mediamen who witnessed and recorded the search by video and still cameras, raided the house of respondent Florentino Blanco at his stated address at Bancal, Meycauayan, Bulacan.

6. Enclosed as Annex "A-1" is a video tape taken of the proceedings during the raid.

7. The composite team was able to enter the said premises of respondent Florentino Blanco where they conducted a search of the subject firearms and ammunition.

8. The search resulted in the arrest of six (6) men who were found carrying various high powered firearms without any license or authority to use or possess such long arms. These persons composing respondent's `private army,' and the unlicensed firearms are as follows:

A. Virgilio Luna y Valderama -

1. PYTHOM (sic) Cal. 347 SN 26946 with six (6) Rounds of Ammo.

2. INGRAM M10 Cal. 45 MP with Suppressor SN: 45457 with two (2) Mags and 54 Rounds of Ammo.

B. Raymundo Bahala y Pon -

1. HKMP5 Sn. C334644 with two (2) Mags and 47 Rounds of Ammo.

C.Roberto Santos y Sacris -

1. Smith and Wesson 357 Magnum Sn: 522218 with six (6) Rounds of Ammo.

D. Melchor Cabanero y Oreil -

1. Armscor 12 Gauge with three (3) Rounds of Ammo.

E. Edgardo Orteza y Asuncion -

1. Paltik Cal. 38 Rev with six (6) Rounds of Ammo.

F. Francisco Libari y Calimag -

1. Paltik Cal. 38 SN: 36869

Copies of the inventory receipts are hereto attached as Annexes "B" to "B-5" hereof.

9. During the search, members of the composite team saw through a large clear glass window, respondent's Galil assault rifle on a sofa inside a closed room of the subject premises.

10. Not allowed entry thereto by respondent and his wife, the members of the composite police-military team applied for the issuance of a second search warrant (Annex "B-6") so that they could enter the said room to seize the said firearm.

11. While waiting for the issuance of the second search warrant, respondent's wife and respondent's brother, Mariano Blanco, claiming to be the campaign manager of respondent in the Nationalist People's Coalition Party, asked permission to enter the locked room so they could withdraw money in a vault inside the locked room to pay their watchers, and the teachers of Meycauayan in the 8 May 1995 elections.

12. For reasons not known to petitioner, Mrs. Florentino Blanco and Mariano Blanco, were allowed to withdraw ten (10) large plastic bags from the vault.

13. When the said PNP composite team examined the ten (10) black plastic bags, they found out that each bag contained ten (10) shoe boxes. Each shoe box when examined contained 200 pay envelopes, and each pay envelope when opened contained the amount of P1,000.00. When questioned, respondent's brother Mariano Blanco and respondent's wife, admitted to the raiding team that the total amount of money in the ten (10) plastic bags is P10,000,000.00.

14. The labels found in the envelope shows that the money were intended as respondent's bribe money to the teachers of Meycauayan. Attached as Annex "C" is the cover of one of the shoe boxes containing the inscription that it is intended to the teachers of Brgy. Lawa, Meycauayan, Bulacan.

15. On election day 8 May 1995, respondent perpetrated the most massive vote-buying activity ever in the history of Meycauayan politics. Attached as Annex "D" is the envelope where this P10,000,000.00 was placed in 100 peso denominations totalling one thousand pesos per envelope with the inscription 'VOTE!!! TINYO.'

This massive vote-buying activity was engineered by the respondent through his organization called 'MTB' or 'MOVEMENT FOR TINYO BLANCO VOLUNTEERS.' The chairman of this movement is respondent's brother, Mariano P. Blanco, who admitted to the police during the raid that these money were for the teachers and watchers of Meycauayan, Bulacan.

Attached as Annex "E" hereof is an MTB ID issued to one Armando Bulan of Precinct 77-A, Brgy. Jasmin, Bancal, Meycauayan, Bulacan. You will note that the ID is perforated in the middle. The purpose is for the voter to tear the office copy and return it to respondent's headquarters to receive the balance of the P500.00 of

the bribe money after voting for respondent during the elections. The voter will initially be given a down-payment of P500.00.

16. This massive vote-buying was also perpetrated by respondent thru the familiar use of flying voters. Attached as Annex "F" hereof is a copy of the Police Blotter dated 8 May 1995 showing that six (6) flying voters were caught in different precincts of Meycauayan, Bulacan, who admitted after being caught and arrested that they were paid P200.00 to P300.00 by respondent and his followers, to vote for other voters in the voter's list.

17. Not satisfied, and with his overflowing supply of money, respondent used another scheme as follows. Respondent's paid voter will identify his target from the list of voter and will impersonate said voter in the list and falsify his signature.

Attached as Annex "G" hereof is the Minutes of Voting and Counting of Votes in Precinct No. 26, Brgy. Calvario, Meycauayan, Bulacan. Annex "G-1" is the statement of one Ma. Luisa de los Reyes Cruz stating that when she went to her precinct to vote, her name was already voted upon by another person. This entry was noted by Leticia T. Villanco, Poll Chairman; Estelita Artajo, - Poll Clerk; and Nelson John Nito - Poll Member.

18. Earlier before the election, respondent used his tremendous money to get in the good graces of the local Comelec Registrar, who was replaced by this Office upon the petition of the people of Meycauayan. Attached as Annex "H" hereof is an article in the 3 May 1995 issue of Abante entitled '1 M Suhol sa Comelec Registrar.'

19. The second search warrant on respondent's residence yielded to more firearms and thousands of rounds of ammunition. These guns were used by respondent to terrorize the population and make the people afraid to complain against respondent's massive vote buying and cheating in today's elections. Respondent's bribery of the teachers ensured the implementation of his vote-buying ballot box switching, impersonations, and other cheating schemes.

Attached as Annexes 'I-1' to I-2' are the pertinent Receipts of the guns and ammunitions seized from respondent. Attached as Annex "J" is a Certification to the same effect.

20. The above acts committed by respondent are clear grounds for disqualification under Sec. 68 of the Omnibus Election Code for giving money to influence, induce or corrupt the voters or public officials performing election functions; for committing acts of terrorism to enhance his candidacy; and for spending in his election campaign an amount in excess of that allowed by the Election Code. There are only 97,000 registered voters in Meycauayan versus respondent's expenses of at least P10,000,000.00 as admitted above. (Emphasis supplied).

On May 15, 1995, Alarilla filed a Very Urgent Ex Parte Motion to Suspend Proclamation. The COMELEC (First Division) granted the motion after finding that there was a "probable commission of election offenses which are grounds for disqualification pursuant to the provisions of section 68 of the Omnibus Election Code (BP 881), and the evidence in support of disqualification is strong." It directed the Municipal Board of Canvassers "to complete the canvassing of election returns of the municipality of Meycauayan, but to suspend proclamation of respondent Florentino P. Blanco should he obtain the winning number of votes for the position of Mayor of Meycauayan, Bulacan until such time when the petitions for disqualification against him shall have been resolved."

On May 25, 1995, Blanco filed a Motion to Lift or Set Aside the Order suspending his proclamation. On May 29, 1995, he filed his Answer to the petition to disqualify him.

On May 30, 1995, the COMELEC (First Division) heard the petition to disqualify Blanco. The parties thereafter submitted their position papers.[2] Blanco even replied to the position paper of Alarilla on June 9, 1995.

On August 15, 1995, the COMELEC (First Division) disqualified Blanco on the ground of vote-buying, viz.:^[3]

“X X X X X X X X

"WHEREFORE, premises considered, the Commission (First Division) RESOLVES to DISQUALIFY Respondent Florentino P. Blanco as a candidate for the Office of Mayor of Meycauayan, Bulacan in the May 8, 1995 elections for having violated Section 261 (a) of the Omnibus Election Code. The Order suspending the proclamation of herein Respondent is now made PERMANENT. The Municipal Board of Canvassers of Meycauayan, Bulacan shall immediately reconvene and, on the basis of the completed canvass of the election returns, determine the winner out of the remaining qualified candidates who shall be immediately proclaimed.

SO ORDERED."

Blanco moved for reconsideration on August 19, 1995 in the COMELEC en banc. Nolasco, as vice mayor, intervened in the proceedings.^[4] He moved for reconsideration of that part of the resolution directing the Municipal Board of Canvassers to "immediately reconvene and, on the basis of the completed canvass of the election returns, determine the winner out of the remaining qualified candidates who shall be immediately proclaimed." He urged that as vice-mayor he should be declared mayor in the event Blanco was finally disqualified. The motions were heard on September 7, 1995. The parties were allowed to file their memoranda with right of reply. On October 23, 1995, the COMELEC en banc denied the motions for reconsideration.

In this petition for certiorari,^[5] Blanco contends:

“X X X X X X X X

18. Respondent COMELEC En Banc committed grave abuse of discretion amounting to lack or excess of jurisdiction and acted arbitrarily in affirming en toto and adopting as its own the majority decision of the First Division in that:

18.1 It upheld the validity of the May 17, 1995 order suspending proclamation of Petitioner Blanco herein as the winning candidate for Mayor of Meycauayan without the benefit of any notice or hearing in gross and palpable violation of Blanco's constitutional right to due process of law.

18.2 It violated the provisions of COMELEC Res. No. 2050 as amended, prescribing the procedure for disposing of disqualification cases arising out of the prohibited acts mentioned in Sec. 68 of the Omnibus Election Code, which Resolution this Honorable Tribunal explicitly sanctioned in the case of Lozano vs. Yorac. Moreover, it (COMELEC) violated Blanco's right to equal protection of the laws by setting him apart from other respondents facing similar disqualification suits whose case were referred by COMELEC to the Law Department pursuant to Com. Res. No. 2050 and ordering their proclamation -- an act which evidently discriminated against Petitioner Blanco herein.

18.3 It decided Petitioner Blanco's disqualification case in a SUMMARY PROCEEDING in violation of law and the precedents which consistently hold that questions of VOTE-BUYING, terrorism and similar such acts should be resolve in a formal election protest where the issue of vote buying is subjected to a full-dress hearing instead of disposing of the issue in a summary proceeding;

18.4 It declared Petitioner Blanco as having been involved in a conspiracy to engage in VOTE-BUYING without that minimum quantum of proof required to establish a disputable presumption of vote-buying in gross and palpable violation of the provisions of Section 28, Rep. Act. 6646;

18.5 It ordered the proclamation of a SECOND PLACER as the duly elected Mayor of Meycauayan, Bulacan, in gross violation and utter disregard of the doctrine laid down by this Honorable Supreme Court in the case of

LABO vs. COMELEC which was reiterated only recently in the case of Aquino vs. Syjuco.

On the other hand, Nolasco contends in his petition for certiorari[6] that he should be declared as Mayor in view of the disqualification of Blanco. He cites section 44 of R.A. No. 7160 otherwise known as the Local Government Code of 1991 and our decision in Labo vs. COMELEC.[7]

We shall first resolve the Blanco petition.

Blanco was not denied due process when the COMELEC (First Division) suspended his proclamation as mayor pending determination of the petition for disqualification against him. Section 6 of R.A. No. 6646 and sections 4 and 5 of the Rule 25 of the Comelec Rules of Procedure merely require that evidence of guilt should be strong to justify the COMELEC in suspending a winning candidate's proclamation. It ought to be emphasized that the suspension order is provisional in nature and can be lifted when the evidence so warrants. It is akin to a temporary restraining order which a court can issue ex-parte under exigent circumstances.

In any event, Blanco was given all the opportunity to prove that the evidence on his disqualification was not strong. On May 25, 1995, he filed a Motion to Lift or Set Aside the Order suspending his proclamation. On May 29, 1995, he filed his Answer to the petition to disqualify him. The COMELEC heard the petition. Blanco thereafter submitted his position paper and reply to Alarilla's position paper. The COMELEC considered the evidence of the parties and their arguments and thereafter affirmed his disqualification. The hoary rule is that due process does not mean prior hearing but only an opportunity to be heard. The COMELEC gave Blanco all the opportunity to be heard. Petitions for disqualification are subject to summary hearings.[8]

Blanco also faults the COMELEC for departing from the procedure laid down in COMELEC Resolution 2050 as amended, in disqualification cases. The resolution pertinently provides:

"x x x x x x x x x x"

Where a similar complaint is filed after election but before proclamation of the respondent candidate the complaint shall, nevertheless, be dismissed as a disqualification case. However, the complaint shall be referred for preliminary investigation to the Law Department. If, before proclamation, the Law Department makes a prima facie finding of guilt and the corresponding information has been filed with the appropriate trial court, the complainant may file a petition for suspension of the proclamation of the respondent with the court before which the criminal case is pending and the said court may order the suspension of the proclamation if the evidence of guilt is strong."

It is alleged that the violation is fatal as it deprived Blanco of equal protection of our laws.

We do not agree. It cannot be denied that the COMELEC has jurisdiction over proclamation and disqualification cases. Article IX-C, section 2 of the Constitution endows the COMELEC the all encompassing power to "enforce and administer all laws and regulations relative to the conduct of an election x x x." We have long ruled that this broad power includes the power to cancel proclamations.[9] Our laws are no less explicit on the matter. Section 68 of B.P. Blg. 881 (Omnibus Election Code) provides:

"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 an 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 elections laws."

Section 6 of R.A. No. 6646 likewise provides:

"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."

Despite these laws and existing jurisprudence, Blanco contends that COMELEC must follow the procedure in Resolution No. 2050 as amended. We hold that COMELEC cannot always be straitjacketed by this procedural rule. The COMELEC has explained that the resolution was passed to take care of the proliferation of disqualification cases at that time. It deemed it wise to delegate its authority to its Law Department as partial solution to the problem. The May 8, 1995 elections, however, did not result in a surfeit of disqualification cases which the COMELEC cannot handle. Hence, its decision to resolve the disqualification case of Blanco directly and without referring it to its Law Department is within its authority, a sound exercise of its discretion. The action of the COMELEC is in accord with Section 28 of R.A. No. 6646, viz:

"x x x.

"SEC. 28. Prosecution of Vote-Buying and Vote-selling. - The presentation of a complaint for violations of paragraph (a) or (b) of Section 261 of Batas Pambansa Blg. 881 supported by affidavits of complaining witness attesting to the offer or promise by or of the voter's acceptance of money or other consideration from the relatives, leaders or sympathizers of a candidate, shall be sufficient basis for an investigation to be immediately conducted by the Commission, directly or through its duly authorized legal officers under Section 68 or Section 265 of said Batas Pambansa Blg. 881. (emphasis supplied)

"x x x."

Indeed, even Commissioner Maambong who dissented from the majority ruling, clings to the view that "Resolution No. 2050 cannot divest the Commission of its duty to resolve disqualification cases under the clear provision of section 6 of R.A. No. 6646." [10] Clearly too, Blanco's contention that he was denied equal protection of the law is off-line. He was not the object of any invidious discrimination. COMELEC assumed direct jurisdiction over his disqualification case not to favor anybody but to discharge its constitutional duty of disposing the case in a fair and as fast a manner as possible.

Blanco also urges that COMELEC erred in using summary proceedings to resolve his disqualification case. Again, the COMELEC action is safely anchored on section 4 of its Rules of Procedure which expressly provides that petitions for disqualification "shall be heard summarily after due notice." Vote-buying has its criminal and electoral aspects. Its criminal aspect to determine the guilt or innocence of the accused cannot be the subject of summary hearing. However, its electoral aspect to ascertain whether the offender should be disqualified from office can be determined in an administrative proceeding that is summary in character.

The next issue is whether there is substantial evidence to prove the vote buying activities of Blanco. The factual findings of the COMELEC (First Division) are as follows: [11]

"x x x

"Respondent argues that the claim of vote-buying has no factual basis because the affidavits and sworn statements admitted as evidence against him are products of hearsay; inadmissible because of the illegal searches; they violate the Rule of Res Inter Alios Acta and the offense of vote-buying requires consummation.

We are not impressed.

A studied reading of the affidavits [Respondent's affidavit is unsigned] attached to the Reply of the Respondent to the Position Paper of the Petitioner [Annexes 1, 2 and 3] would reveal that they are in the nature of general denials emanating from individuals closely associated or related to respondent Blanco.

The same holds true with the affidavits attached to Respondent's Position Paper [Annexes 1, 2, 3 and 4]. Said affidavits were executed by Blanco's political leaders and private secretary.

On the other hand, the affidavit of Romeo Burgos [Exhibit "E-1"] is rich in detail as to how the alleged vote-buying was conducted.

Moreover, the same is corroborated by object evidence in the nature of MTB [Movement for Tinoy Blanco] cards which were in the possession of the affiants and allegedly used as a means to facilitate the vote-buying scheme.

There are also admissions of certain individuals who received money to vote for Respondent [Annexes "E-2", "E-3", "E-4", "E-5", "E-6", "E-7", "E-8", "E-9" and "E-10"].

On the day of the elections, two individuals were apprehended for attempting to vote for Respondent when they allegedly are not registered voters of Meycauayan. A criminal complaint for violation of section 261 [2] of BP 881 was filed by P/Sr. Inspector Alfred S. Corpus on May 9, 1995 with the Municipal Trial Court of Bulacan. The same was docketed as Criminal Case 95-16996 [Exhibit F-2].

Again, similar pay envelopes with money inside them were found in the possession of the suspected flying voters.

The incident was corroborated by Adriano Llorente in his affidavit narrating the same [Exhibit "F-1"]. Llorente, a poll watcher of Petitioner, was the one who accosted the two suspected flying voters when the latter attempted to vote despite failing to locate their names in the voter's list.

From this rich backdrop of detail, We are disappointed by the general denial offered by Respondent. In *People of the Philippines vs. Navarro*, G.R. No. 96251, May 11, 1993, 222 SCRA 684, the Supreme Court noted that "Denial is the weakest defense" [page 692].

In *People of the Philippines vs. Rolando Precioso, et al.*, G.R. No. 95890, May 12, 1993, 221 SCRA 1993, the Supreme Court observed that,

'We have consistently ruled that denials if unsubstantiated by clear and convincing evidence are negative and self-serving evidence which deserves no weight in law and cannot be given greater evidentiary weight over the testimony of credible witnesses. Ergo, as between the positive declarations of the prosecution witness and the negative statements of the accused, the former deserves more credence.' [page 754].'

However, Respondent conveniently resorts to section 33, Rule 130 of the Revised Rules of Court which states that a declaration of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included herein, may be given in evidence against him [affiants who executed Exhibits E-1 to E-10] but not against Respondent.

There is no merit in this contention.

The affiants are not the accused. Their participation in the herein case is in the nature of witnesses who have

assumed the risk of being subsequently charged with violating Section 261 [1] of BP 881. In fact, their affidavits were sought by the Petitioner and not by any law enforcement agency. Even Respondent admits this finding when he filed his Reply to Petitioner's Position Paper and Motion to Refer for Preliminary Investigation and Filing of Information in Court against the Persons Who Executed Exhibits E-1 to E-10 for Having Admitted Commission of Election Offense. If they were the accused, why file the motion? Would not this be redundant if not irrelevant?

x x x

Another telling blow is the unexplained money destined for the teachers. Why such a huge amount? Why should the Respondent, a mayoralty candidate, and according to his own admission, be giving money to teachers a day before the elections? What were the peso bills doing in pay envelopes with the inscription "VOTE!!! TINOY", and kept in shoe boxes with the word "Teachers" written on the covers thereof?

There is also something wrong with the issuance of the aforementioned MTB cards when one considers the testimony of Burgos that more or less 50,000 of these cards, which is equivalent to more or less 52% of the 97,000 registered voters of Meycauayan, Bulacan, were printed by respondent; that there are only 443 precincts in Meycauayan; that under the law, a candidate is allowed only one watcher per polling place and canvassing area; and, finally, that there is no explanation at all by the respondent as to what these "watchers" did in order to get paid P300.00 each.

x x x

Respondent also avers that for an allegation of vote-buying to prosper, the act of giving must be consummated.

Section 281 [a] of BP 881 states "any person who gives, offers, or promises money x x x." Section 28 of RA 6646 also states that "the giver, offeror, the promisor as well as the solicitor, recipient and conspirator referred to in paragraphs [a] and [b] of section 261 of Batas Pambansa Blg. 881 shall be liable as principals: x x x.

While the giving must be consummated, the mere act of offering or promising something in consideration for someone's vote constitutes the offense of vote-buying.

In the case at bar, the acts of offering and promising money in consideration for the votes of said affiants is sufficient for a finding of the commission of the offense of vote-buying."

These factual findings were affirmed by the COMELEC en banc against the lone dissent of Commissioner Maambong.

There is an attempt to discredit these findings. Immediately obvious in the effort is the resort to our technical rules of evidence. Again, our ingrained jurisprudence is that technical rules of evidence should not be rigorously applied in administrative proceedings especially where the law calls for the proceeding to be summary in character. More importantly, we cannot depart from the settled norm of reviewing decisions of the COMELEC, i.e., that "this Court cannot review the factual findings of the COMELEC absent a grave abuse of discretion and a showing of arbitrariness in its decision, order or resolution." [12]

We now come to the petition of Nolasco that he should be declared as mayor in the event Blanco is finally disqualified. [13] We sustain the plea. Section 44, Chapter 2 of the Local Government Code of 1991 (R.A. No. 7160) is unequivocal, thus:

"x x x

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

vice governor, mayor, or vice mayor, the highest ranking sanggunian member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the governor, vice governor, mayor or vice mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein.

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

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

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

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

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

In the same vein, Article 83 of the Rules and Regulations Implementing, the Local Government Code of 1991 provides:

"x x x.

"ART. 83. Vacancies and Succession of Elective Local Officials.- (a) What constitutes permanent vacancy - A permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.

(b) Permanent vacancies in the offices of the governor, vice governor, mayor and vice mayor -

(1) If a permanent vacancy occurs in the office of the governor or mayor, the vice governor or vice mayor concerned shall ipso facto become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice governor, mayor, or vice mayor, the highest ranking sanggunian member or, in case of his permanent inability, the second highest ranking sanggunian member, shall ipso facto become the governor, vice governor, mayor or vice mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined in this Article."

Our case law is now settled that in a mayoralty election, the candidate who obtained the second highest number of votes, in this case Alarilla, cannot be proclaimed winner in case the winning candidate is disqualified. Thus, we reiterated the rule in the fairly recent case of *Reyes v. COMELEC*,^[14] viz:

"x x x x x x x x

"We likewise find no grave abuse of discretion on the part of the COMELEC in denying petitioner Julius O. Garcia's petition to be proclaimed mayor in view of the disqualification of Renato U. Reyes.

"That the candidate who obtains the second highest number of votes may not be proclaimed winner in case the winning candidate is disqualified is now settled. The doctrinal instability caused by see-sawing rulings has since been removed. In the latest ruling on the question, this Court said:

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 the circumstances.

"Garcia's plea that the votes cast for Reyes be invalidated is without merit. The votes cast for Reyes are presumed to have been cast in the belief that Reyes was qualified and for that reason can not be treated as stray, void, or meaningless. The subsequent finding that he is disqualified cannot retroact to the date of the elections so as to invalidate the votes cast for him."

Consequently, respondent COMELEC committed grave abuse of discretion insofar as it failed to follow the above doctrine, a descendant of our ruling in *Labo v. COMELEC*.^[15]

A final word. The dispute at bar involves more than the mayoralty of the municipality of Meycauyan, Bulacan. It concerns the right of suffrage which is the bedrock of republicanism. Suffrage is the means by which our people express their sovereign judgment. Its free exercise must be protected especially against the purchasing power of the peso. As we succinctly held in *People v. San Juan*,^[16] "each time the enfranchised citizen goes to the polls to assert this sovereign will, that abiding credo of republicanism is translated into living reality. If that will must remain undefiled at the starting level of its expression and application, every assumption must be indulged in and every guarantee adopted to assure the unmolested exercise of the citizen's free choice. For to impede, without authority valid in law, the free and orderly exercise of the right of suffrage, is to inflict the ultimate indignity on the democratic process."

IN VIEW WHEREOF, the resolution of the respondent COMELEC en banc dated October 23, 1995 is affirmed with the modification that petitioner Edgardo C. Nolasco is adjudged as Mayor of Meycauyan, Bulacan in view of the disqualification of Florentino P. Blanco. No costs.

SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Romero, Melo, Vitug, Mendoza and Francisco, JJ., concur.

Belosillo, J., please see Concurring and Dissenting Opinion.

Hermosisima, Jr., and Torres, Jr., JJ., on official leave.

Kapunan, J., on leave.

Padilla, J., no part on leave during deliberation.

Panganiban, J., no part. Former law office was counsel of petitioner Blanco.

[1] A third candidate, Mauro SC del Rosario received 6, 359 votes.

[2] Blanco submitted his position paper on June 5, 1995.

[3] Composed of Presiding Commissioner Regalado E. Maambong and Commissioners Graduacion A. Reyes-Claravall and Julio F. Desamito with Commissioner Maambong dissenting.

[4] He filed a Motion to Admit Intervenor's Motion for Reconsideration on August 18, 1995.

[5] G.R. No. 122258.

[6] G.R. No. 122250.

[7] 176 SCRA 1.

[8] See Section 4 of COMELEC Rules of Procedure.

[9] *Lacson v. COMELEC*, G.R. No. L-16261, December 28, 1951.

[10] See p. 27 of his August 15, 1995 Concurring and Dissenting Opinion.

[11] See pp. 50-53 of August 15, 1995 Resolution.

[12] *Lozano v. Yorac*, 203 SCRA 256.

[13] The same plea is made by Blanco in his petition.

[14] 254 SCRA 514 (1996).

[15] *Supra*.

[16] 22 SCRA 505.

CONCURRING AND DISSENTING OPINION

BELLOSILLO, J.:

I find difficulty in concurring with the majority that the COMELEC order disqualifying Blanco is based on substantial evidence; therefore I vote to set aside that order. I however join the majority opinion that, as a result of the disqualifying of Blanco, the Labo doctrine [1] should apply.

The law on vacancies and succession of elective local officials is very clear. Section 44 (a), Chapter 2, R.A. No. 7160, otherwise known as The Local Government Code of 1991, provides that “[i]f a permanent vacancy occurs in the office of the x x x mayor, the x x x vice mayor concerned shall become the x x x mayor.” Paragraph 2 of the same provision states that “a permanent vacancy arises when an elective local official x x x fails to qualify xxxx These provisions are echoed in Art. 83 of the Implementing Rules and Regulations of the Local Government Code of 1991.

When the language of the law is clear, explicit and unequivocal, it admits no room for interpretation, but simply application. This is a basic legal precept. In the issue at hand, I find no necessity to make distinctions as the applicable law is clear. Accordingly, considering that Blanco has been adjudged by the majority to be disqualified, he comes within the purview of “fail(ing) to qualify” for the said office. And since a “permanent vacancy” has occurred in the office of the mayor, Nolasco who is the duly elected vice mayor, and who now occupies the position of mayor in an acting capacity, should succeed as provided for by law. And this is in consance with the pronouncements of this Court in *Geronimo v. Ramos* [2] and *Topacio v. Paredes* [3] which were reiterated in *Labo v. COMELEC* [4]

x x x it would be extremely repugnant to the basic concept of the constitutionally guaranteed right to suffrage if a candidate who has not acquired the majority or plurality of votes is proclaimed a winner and imposed as the representative of a constituency, the majority of which have positively declared through their ballots that they do not choose him.

Sound policy dictates that public elective offices are filled by those who have received the highest number of votes cast in the election for that office, and it is a fundamental idea in all republican forms of government that no one can be declared elected and no measure can be declared carried unless he or it receives a plurality of legal votes cast in the election (20 Corpus Juris 2nd, §243, p.676).

The fact that the candidate who obtained the highest number of votes is later declared to be disqualified or not eligible for the office to which he was elected does not necessarily entitle the candidate who obtained the second highest number of votes to be declared the winner of the elective office x x x x

The rightful assumption of Nolasco to the Office of mayor is however only a consequence of the disqualification

of Blanco to which I dissent. For, I do not agree with the submission that the COMELEC order disqualifying Blanco is based on substantial evidence. While the dossier of evidence submitted by Alarilla to show that Blanco committed massive vote-buying may appear at first blush to be overwhelming, a careful scrutiny of each piece of evidence does not measure up. I simply find no evidence to link Blanco to the alleged vote-buying. Consequently, I agree with Commissioner Maambong that Alarilla has failed to substantiate his allegation that Balnco engaged in or had knowledge of and consented to the buying of votes.

Alarilla relies on several affidavits narrating incidents to prove that Blanco supposedly bought votes. But aside from the inaccuracies and the doubtful origin of these affidavits, which were executed only about a month after the petition to disqualify Blanco was filed, using fill-in-the-blanks forms, none of the affiants was presented before respondent COMELEC to substantiate the allegations. [5] At the very least, some affiants should have been presented in the hearings supposedly conducted.

In his Petition (to disqualify Blanco), Alarilla alleged that “[w]hen the said PNP composite team examined the ten (10) black plastic bags, they found out that each bag contained ten (10) shoe boxes. Each shoe box when examined contained 200 pay envelopes, and each pay enveloped when opened contained the amount of P1,000.00. When questioned, respondent’s brother (Mariano P. Blanco) and respondent’s wife allegedly admitted to the raiding team that the total amount of money in the ten (10) plastic bags is (was) P10,000,000.00.[6]

But Alarilla has miserably failed to substantiate his allegations. He merely presented the sworn statement of Orlando Mauricio y Labora who claims to have filmed the raid. But the statement of Mauricio are not even consisted with the allegations of Alarilla in his Petition to disqualify Blanco. In his Petition, Alarilla claims that each “pay envelope” contained P1,000.00, [7] while in the affidavit of Mauricio it is stated that there were envelopes which contained P2,000.00 (Exh. “A-3”). Alarilla should have presented at least one (1) member of the PNP raiding team who supposedly examined the ten (10) black plastic bags and questioned Blanco’s brother and wife as to the amount of the supposed money. In the absence of a credible testimony, the alleged admission of the brother and wife of Blanco that” he total amount of money in the ten (10) plastic bags is P10,000,000.00” becomes quite doubtful. For the imputed admission is simply contrary to human nature and experience. If there really was P10,000,000.00 in the plastic bags, there was no need to divulge the amount to the raiding team. The Blancos could have just kept quiet and let the raiding team count the money.

The video tape marked Exh. “A-1” could not be of any help to Alarilla as its content were not even viewed by the COMELEC, [8] neither the photograph of a cover of one of the shoe boxes with the words ”LAWA” and “TEACHERS” (Exh. “C”), nor the photograph of an envelope with the inscription “VOTE!!! TINYOY!!!” (Exh. “D”), which by themselves mean nothing. Suffice it to say that these pieces of evidence are miserably insufficient to link Blanco to the alleged vot-buying. The same is true with the MTB identification card with perforation in the middle portion with the inscription “Office Copy” on the right half of the card (Exh. “E”); it cannot by itself be evidence of vote-buying. On its face it is simply an evidence of membership with the Movement for Tinoy Blanco Volunteers and the “Office Copy” may only be for the files of the office. Certainly it may be speculated that these identification cards may somehow be used to carry out a vote-buying scheme. But speculations that they are, it is still difficult to surmise how they could ensure that the cardholders would surely vote for Blanco.

Even the uniform claim of the nine (9) individuals who filled out computerized print-outs stating that they received MTB identification cards and envelopes containing P300.00 each from the henchmen of Blanco and for the “Office Copy” of their respective MTB cards, and that petitioner Blanco himself promised to give them additional P200.00 in exchange for the other half of their MTB cards after the elections, if he won as Mayor (Exh. “E-2” to “E-10”), deserves scant consideration. These statements are contrary to the allegations in the petition to disqualify Blanco where it is alleged that MTB cardholders were intially given P500.00 and promised another

P500.00.[9]

I cannot disagree with the observations of Commissioner Maambong that the affidavits appear contrived as they are “1. Form Affidavits (computerized print-outs) in Pilipino, containing the same wordings, except the blank spaces in paragraph 1 and paragraph 2, filled up with the same date ‘April 17’ and ‘May 17’, respectively, notarized by the same Notary Public (Donato G. Mabbayao, Jr.) on the same date (June 4, 1995 [about a month after the elections]).”[10]

The “handwritten admissions” of alleged flying voters Ponciano Velasquez and Lito Ramirez stating that they were paid P300.00 each to vote for Blanco (Exh. “F-3” and “F-4”) are likewise doubtful. Save for the names of the supposed flying voters, the wordings of the two “handwritten admissions” are exactly the same, including the alleged residence of the said flying voters, i.e., Bo. Malhacan, Maycauayan, Bulacan. However, both the criminal complaints and the affidavit of Barangay Captain Romeo Garcia state that Ponciano Velasquez is a native of Lupacan, Tiaong, Quezon, and a resident of Lolomboy, Bocaue, Bulacan, while Lito Ramirez is a native of Rosario, Batangas, and a resident of Zamora, Maycauayan, Bulacan. It is thus apparent that they are not actually residents of Bo. Malhacan, Maycauayan, Bulacan, as stated in their respective “handwritten admissions.” Could it then be that the “handwritten admissions” were dictated or were actually written by other persons, for how could Ponciano Velasquez and Lito Ramirez make a mistake with their respective addresses?

For sure, the affidavit of Barangay Captain Romeo C. Garcia stating that he retrieved two (2) envelopes with P300.00 each from flying voters Ponciano Velasquez and Lito Ramirez and turned them over to the police (Exh. “F-5”) is not an evidence that Blanco engaged in or knew about and consented to the alleged vote-buying.

Thus even the affidavit of Romeo Burgos executed before Notary Public Donato G. Mabbayao, Jr., together with all the other affidavits sworn before the same Notary Public, spawns serious doubt as it was notarized only on 4 June 1995 – almost a month after the petition to disqualify Blanco was filed.

In fine, I do not find any competent substantial evidence to link Blanco to the alleged vote-buying, much less the alleged massive vote-buying. At best respondent Alarilla would indulge in presumptions which, unfortunately, cannot be sufficient basis to unseat his political rival who obtained 29,753 votes as against his 23,038 votes. The pieces of evidence presented by Alarilla, to my mind, are too inadequate to support his stance. It may be true that the electoral aspect of vote-buying may be determined in an administrative proceeding that is summary in character and where technical rules of evidence may not be applied rigorously. Yet, caution should not be thrown to the winds especially here where the two opposing factions that have been hotly contesting the same post are known to have formidable followers, for it would not be difficult to manufacture spurious affidavits and even real evidence. It is imperative to scrutinize carefully the evidence presented by Alarilla to determine whether they are relevant evidence which a reasonable mind accept as adequate to support the conclusion that Blanco indeed bought votes.

The disqualification of Blanco should come from the strength of the evidence of Alarilla, not from the weakness of the former’s defense. Upon scrutiny, I submit that the pieces of evidence submitted by Alarilla have not met the mandated standard. The evidence presented in my opinion falls on its own weight as it fails to show that Blanco himself bought votes or that he was aware of and consented to any vote-buying.

In view of the foregoing, I VOTE TO SET ASIDE AND REVERSE THE RESOLUTION OF RESPONDENT COMELEC DISQUALIFYING PETITIONER BLANCO AS A CANDIDATE FOR THE OFFICE OF MAYOR OF MEYCAUAYAN, BULACAN, for having allegedly violated Sec. 261, par. (a), BP 881.

It is my view that respondent COMELEC gravely abused its discretion when it based its findings on unfounded

assumptions and unsubstantiated allegations.

[1] G.R. No. 86564, 1 August 1989, 176 SCRA 1, 21.

[2] G.R. No. 60504, 14 May 1985, 136 SCRA 435.

[3] 23 Phil. 238 (1912).

[4] See note 1.

[5] See Dissenting Opinion of Commissioner Maambong, p.23; Rollo of G.R. No. 122258, p. 142

[6] Petition (to disqualify Meycauayan, Bulacan, mayoralty candidate Florentino P. Blanco), par. 13, p.4; Rollo, G.R.No.122250, p. 26.

[7] Ibid.

[8] See Concurring and Dissenting Opinion of Commisioner Maambong in the Resolution of 15 August 1995 of the COMELEC, (First Division), p. 3; Rollo, G.R. No. 122258, p. 63.

[9] See Note 5.

[10] Id., p. 43; Id., p. 103.

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