

**RAYMUNDO A. BAUTISTA @ “OCA”, PETITIONER, VS.
HONORABLE COMMISSION ON ELECTIONS, JOSEFINA P. JAREÑO,
HON. MAYOR RAYMUND M. APACIBLE, FRANCISCA C. RODRIGUEZ,
AGRIPINA B. ANTIG, M...**

G.R. Nos. 154796-97. October 23, 2003

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for certiorari and prohibition with a prayer for the issuance of a temporary restraining order to nullify Resolution Nos. 5404 and 5584 of the Commission on Elections ("COMELEC") en banc. Resolution No. 5404[1] dated 23 July 2002 ordered the deletion of Raymundo A. Bautista's ("Bautista") name from the official list of candidates for the position of Punong Barangay of Barangay Lumbangan, Nasugbu, Batangas ("Lumbangan") in the 15 July 2002 elections. Resolution No. 5584[2] dated 10 August 2002 provided for the policy of the COMELEC regarding proclaimed candidates found to be ineligible for not being registered voters in the place where they ran for office.

The Facts

On 10 June 2002, Bautista filed his certificate of candidacy for Punong Barangay in Lumbangan for the 15 July 2002 barangay elections. Election Officer Josefina P. Jareño ("Election Officer Jareño") refused to accept Bautista's certificate of candidacy because he was not a registered voter in Lumbangan. On 11 June 2002, Bautista filed an action for mandamus against Election Officer Jareño with the Regional Trial Court of Batangas, Branch 14 ("trial court").[3] On 1 July 2002, the trial court ordered Election Officer Jareño to accept Bautista's certificate of candidacy and to include his name in the certified list of candidates for Punong Barangay. The trial court ruled that Section 7 (g) of COMELEC Resolution No. 4801[4] mandates Election Officer Jareño to include the name of Bautista in the certified list of candidates until the COMELEC directs otherwise.[5] In compliance with the trial court's order, Election Officer Jareño included Bautista in the certified list of candidates for Punong Barangay. At the same time, Election Officer Jareño referred the matter of Bautista's inclusion in the certified list of candidates with the COMELEC Law Department on 5 July 2002.[6] On 11 July 2002, the COMELEC Law Department recommended the cancellation of Bautista's certificate of candidacy since he was not registered as a voter in Lumbangan. The COMELEC en banc failed to act on the COMELEC Law Department's recommendation before the barangay elections on 15 July 2002.

During the 15 July 2002 barangay elections, Bautista and private respondent Divina Alcoreza ("Alcoreza") were candidates for the position of Punong Barangay in Lumbangan. Bautista obtained the highest number of votes (719) while Alcoreza came in second with 522 votes, or a margin of 197 votes. Thus, the Lumbangan Board of Canvassers ("Board of Canvassers")[7] proclaimed Bautista as the elected Punong Barangay[8] on 15 July 2002.

On 8 August 2002, Bautista took his oath of office as Punong Barangay before Congresswoman Eileen Ermita-Buhain of the First District of Batangas. On 16 August 2002, Bautista again took his oath of office during a mass oath-taking ceremony administered by Nasugbu Municipal Mayor Raymund Apacible.

Meanwhile, COMELEC issued Resolution No. 5404 on 23 July 2002 and Resolution No. 5584 on 10 August 2002 ("COMELEC Resolutions"). In Resolution No. 5404, the COMELEC en banc resolved to cancel Bautista's certificate of candidacy. The COMELEC en banc directed the Election Officer to delete Bautista's name from the official list of candidates. The dispositive portion of Resolution No. 5404 reads:

Considering the foregoing, the Commission, RESOLVED, as it hereby RESOLVES, to ADOPT the recommendation, as follows:

- To DENY due course to/or cancel the certificates of candidacy of the following:
 - A. For Barangay Officials:
 - CONRADO S. PEDRAZA - Navotas
 - PIO B. MALIGAYA - Sampaga
 - PATERNO H. MENDOZA - Sampaga all of Balayan, Batangas.
 - a. RAY OCA A. BAUTISTA, candidate for Punong Barangay of Brgy. Lumbangan, Nasugbu, Batangas, for not being registered voters of barangays where they are running for an office;
- To DIRECT the Election Officers of Balayan, Batangas and Nasugbu, Batangas, to delete their names in the official list of candidates in their respective Barangays without prejudice to the filing of complaint against them for misrepresentation under Section 74 of the Omnibus Election Code if the evidence so warrants.

Let the Law Department implement this resolution.

On the other hand, Resolution No. 5584 expressed COMELEC's policy regarding proclaimed candidates found to be ineligible for not being registered voters in the place of their election, thus:

ON PROCLAIMED CANDIDATES FOUND TO BE INELIGIBLE FOR BEING NOT REGISTERED VOTERS IN THE PLACE WHERE THEY WERE ELECTED.

(a) For a proclaimed candidate whose certificate of candidacy was denied due course to or cancelled by virtue of a Resolution of the Commission En Banc albeit such Resolution did not arrive on time.

- To DIRECT the Election Officers concerned to implement the resolution of the Commission deleting the name of the candidate whose certificate of candidacy was denied due course;
- To DIRECT the candidate whose name was ordered deleted to cease and desist from taking his oath of office or from assuming the position to which he was elected, unless a temporary restraining order was issued by the Supreme Court; and
- To RECONVENE the Board of Canvassers for the purpose of proclaiming the duly-elected candidates and correcting the Certificate of Canvass of Proclamation.

(b) For a proclaimed candidate who is subsequently declared disqualified by the Commission in the disqualification case filed against him prior to his proclamation.

- To DIRECT the proclaimed disqualified candidate to cease and desist from taking his oath of office or from assuming the position to which he was elected, unless a temporary restraining order was issued by the Supreme Court; and

- To RECONVENE the Board of Canvassers for the purpose of proclaiming the duly-elected candidates and correcting the Certificate of Canvass of Proclamation.

(c) For a proclaimed candidate who is found to be ineligible only after his proclamation (i.e., There is no Resolution denying due course to or canceling his certificate of candidacy and there is no petition for disqualification pending against him before his proclamation.)

- To DISMISS any and all cases questioning the eligibility of such candidate for LACK OF JURISDICTION, the proper remedy being a quo warranto case before the metropolitan or municipal trial court.

In a letter dated 19 August 2002,[9] COMELEC Commissioner Luzviminda Tancangco directed Election Officer Jareño to (1) delete the name of Bautista from the official list of candidates for Punong Barangay of Barangay Lumbangan; (2) order the Board of Canvassers of Lumbangan to reconvene for the purpose of proclaiming the elected Punong Barangay with due notice to all candidates concerned; and (3) direct the proclaimed disqualified candidate Bautista to cease and desist from taking his oath of office or from assuming the position which he won in the elections, citing COMELEC Resolution Nos. 5404 and 5584. Consequently, Election Officer Jareño issued on 20 August 2002 an Order[10] deleting the name of Bautista from the list of candidates for Punong Barangay. The Order also prohibited Bautista from assuming the position and discharging the functions of Punong Barangay of Lumbangan pursuant to the COMELEC Resolutions. The Board of Canvassers reconvened on 23 August 2002 and after making the necessary corrections in the Certificate of Canvass of Votes, proclaimed Alcoreza as the winning Punong Barangay.[11] Alcoreza thus assumed the post of Punong Barangay of Lumbangan.

On 26 August 2002, Bautista wrote a letter to COMELEC requesting the latter for reconsideration of the COMELEC Resolutions.

On 9 September 2002, while his letter for reconsideration was still pending with the COMELEC, Bautista filed this petition for certiorari and prohibition with a prayer for the issuance of a temporary restraining order.

The Issues

The issues raised are:

- Whether the COMELEC en banc committed grave abuse of discretion amounting to excess or lack of jurisdiction when it issued Resolution Nos. 5404 and 5584;
- Whether the COMELEC deprived Bautista of due process when the COMELEC en banc issued Resolution Nos. 5404 and 5584; and
- Whether it was proper to proclaim Alcoreza as Punong Barangay in view of the alleged disqualification of the winning candidate Bautista.

The Court's Ruling

Before considering the merits of the case, we shall first resolve the procedural questions raised by respondents. Respondents contend that a motion for reconsideration of the assailed COMELEC Resolutions is a prerequisite to the filing of a petition for certiorari and prohibition. Absent any extraordinary circumstances, a party who has filed a motion for reconsideration should wait for the resolution of the motion before filing the petition for certiorari. Respondents allege that the instant petition is premature because Bautista has a pending motion for reconsideration of the COMELEC Resolutions. Respondents claim that Bautista filed the instant petition barely two weeks after filing the motion for reconsideration with the COMELEC en banc without waiting for the resolution of his motion.[12]

The contention of respondents is wrong. The case[13] cited by respondents refers to a motion for reconsideration

pending before the COMELEC en banc seeking the reconsideration of a resolution rendered by a COMELEC division. Rule 19 of the 1993 COMELEC Rules of Procedure allows a motion to reconsider a decision, resolution, order, or ruling of a division. However, Section 1 (d), Rule 13 of the 1993 COMELEC Rules of Procedure prohibits a motion to reconsider a resolution of the COMELEC en banc except in cases involving election offenses. As held in *Angelia v. Commission on Elections*:^[14]

We hold that petitioner acted correctly in filing the present petition because the resolution of the COMELEC in question is not subject to reconsideration and, therefore, any party who disagreed with it only had one recourse, and that was to file a petition for certiorari under Rule 65 of the Rules of Civil Procedure. Rule 13, §1 of the COMELEC Rules of Procedure provides:

What Pleadings are Not Allowed. - The following pleadings are not allowed:

.. . .

d) motion for reconsideration of an en banc ruling, resolution, order or decision except in election offense cases;

.. . .

As the case before the COMELEC did not involve an election offense, reconsideration of the COMELEC resolution was not possible and petitioner had no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. For him to wait until the COMELEC denied his motion would be to allow the reglementary period for filing a petition for certiorari with this Court to run and expire.

The instant controversy involves resolutions issued by the COMELEC en banc which do not pertain to election offenses. Hence, a special civil action for certiorari is the proper remedy^[15] in accordance with Section 2, Rule 64 of the Rules of Court which provides:

SEC. 2. Mode of review. - A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on certiorari under Rule 65 except as hereinafter provided. (Emphasis supplied)

Whether the COMELEC en banc committed grave abuse of discretion amounting to excess or lack of jurisdiction in issuing Resolution Nos. 5404 and 5584

Bautista argues that without any disqualification case formally filed against him, the COMELEC has no jurisdiction to take cognizance of his case. The COMELEC cannot *motu proprio* act on the issue of his alleged lack of qualification. Even assuming that there was a disqualification case filed against him, it is the COMELEC sitting in division which has jurisdiction and not the COMELEC en banc.^[16]

On the other hand, respondents allege that the Constitution vests the COMELEC with the power to enforce and administer all laws and regulations relative to the conduct of elections. The Constitution thus empowers the COMELEC to pass upon the qualification of candidates for elective office. Furthermore, respondents submit that the COMELEC's jurisdiction to cancel the certificate of candidacy of disqualified candidates is already settled jurisprudence.^[17]

Respondents cited cases to support their claim that the COMELEC has jurisdiction to cancel the certificates of candidacy of disqualified candidates. However, the COMELEC heard these cases first in division and not en banc in the first instance.

In *Garvida v. Sales, Jr.*,^[18] the Court held that it is the COMELEC sitting in division and not the COMELEC en banc which has jurisdiction over petitions to cancel a certificate of candidacy. The Court held:

x x x The Omnibus Election Code, in Section 78, Article IX, governs the procedure to deny due course to or cancel a certificate of candidacy, viz:

"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 filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before election."

In relation thereto, Rule 23 of the COMELEC Rules of Procedure provides that a petition to deny due course to or cancel a certificate of candidacy for an elective office may be filed with the Law Department of the COMELEC on the ground that the candidate has made a false material representation in his certificate. The petition may be heard and evidence received by any official designated by the COMELEC after which the case shall be decided by the COMELEC itself.

Under the same Rules of Procedure, jurisdiction over a petition to cancel a certificate of candidacy lies with the COMELEC sitting in Division, not en banc. Cases before a Division may only be entertained by the COMELEC en banc when the required number of votes to reach a decision, resolution, order or ruling is not obtained in the Division. Moreover, only motions to reconsider decisions, resolutions, orders or rulings of the COMELEC in Division are resolved by the COMELEC en banc.

It is therefore the COMELEC sitting in Divisions that can hear and decide election cases. This is clear from Section 3 of the said Rules thus:

"Sec. 3. The Commission in Sitting in Divisions. - The Commission shall sit in two (2) Divisions to hear and decide protests or petitions in ordinary actions, special actions, special cases, provisional remedies, contempt and special proceedings except in accreditation of citizens' arms of the Commission."

In the instant case, the COMELEC en banc did not refer the case to any of its Divisions upon receipt of the petition. It therefore acted without jurisdiction or with grave abuse of discretion when it entertained the petition and issued the order of May 2, 1996. (Emphasis supplied)

In this case, Election Officer Jareño reported to the COMELEC Law Department Bautista's ineligibility for being a non-registered voter. The COMELEC Law Department recommended to the COMELEC en banc to deny due course or to cancel Bautista's certificate of candidacy. The COMELEC en banc approved the recommendation in Resolution No. 5404 dated 23 July 2002.

A division of the COMELEC should have first heard this case. The COMELEC en banc can only act on the case if there is a motion for reconsideration of the decision of the COMELEC division. Hence, the COMELEC en banc acted without jurisdiction when it ordered the cancellation of Bautista's certificate of candidacy without first referring the case to a division for summary hearing.

The proceeding on the cancellation of a certificate of candidacy does not merely pertain to the administrative functions of the COMELEC. Cancellation proceedings involve the COMELEC's quasi-judicial functions. The Court discussed the difference between administrative and quasi-judicial functions in *Villarosa v. Commission on Elections*:^[19]

In the concurring opinion of Justice Antonio in *University of Nueva Caceres vs. Martinez*, 56 SCRA 148, he noted that

(t)he term "administrative" connotes, or pertains, to "administration, especially management, as by managing or conducting, directing or superintending, the execution, application, or conduct of persons or things." It does not entail an opportunity to be heard, the production and weighing of evidence, and a decision or resolution

thereon.

While a "quasi-judicial function" is

A term which applies to the action, discretion, etc., of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature. (Emphasis supplied)

In the exercise of its adjudicatory or quasi-judicial powers, the Constitution mandates the COMELEC to hear and decide cases first by division and upon motion for reconsideration, by the COMELEC en banc.[20] In *Baytan v. COMELEC*,[21] the Court expounded on the administrative and quasi-judicial powers of the COMELEC. The Court explained:

Under Section 2, Article IX-C of the 1987 Constitution, the COMELEC exercises both administrative and quasi-judicial powers. The COMELEC's administrative powers are found in Section 2 (1), (3), (4), (5), (6), (7), (8), and (9) of Article IX-C. The 1987 Constitution does not prescribe how the COMELEC should exercise its administrative powers, whether en banc or in division. The Constitution merely vests the COMELEC's administrative powers in the "Commission on Elections," while providing that the COMELEC "may sit en banc or in two divisions." Clearly, the COMELEC en banc can act directly on matters falling within its administrative powers. Indeed, this has been the practice of the COMELEC both under the 1973 and 1987 Constitutions.

On the other hand, the COMELEC's quasi-judicial powers are found in Section 2 (2) of Article IX-C, to wit:

"Section 2. The Commission on Elections shall exercise the following powers and functions:

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(2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.

Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable."

The COMELEC's exercise of its quasi-judicial powers is subject to Section 3 of Article IX-C which expressly requires that all election cases, including pre-proclamation controversies, shall be decided by the COMELEC in division, and the motion for reconsideration shall be decided by the COMELEC en banc. It follows, as held by the Court in *Canicosa*, that the COMELEC is mandated to decide cases first in division, and then upon motion for reconsideration en banc, only when the COMELEC exercises its quasi-judicial powers. (Emphasis supplied)

Under Section 3, Rule 23 of the 1993 COMELEC Rules of Procedure, a petition for the denial or cancellation of a certificate of candidacy must be heard summarily after due notice. It is thus clear that cancellation proceedings involve the exercise of the quasi-judicial functions of the COMELEC which the COMELEC in division should first decide. More so in this case where the cancellation proceedings originated not from a petition but from a report of the election officer regarding the lack of qualification of the candidate in the barangay election. The COMELEC en banc cannot short cut the proceedings by acting on the case without a prior action by a division because it denies due process to the candidate.

Whether the COMELEC deprived Bautista of due process when it issued Resolution Nos. 5404 and 5584

Bautista alleges that the COMELEC denied him due process because there was no notice and hearing prior to the

issuance of Resolution Nos. 5404 and 5584. He became aware of the issuance of the COMELEC Resolutions only when he received a copy of Election Officer Jareño's Order dated 20 August 2002 ordering him to cease and desist from assuming the position of Punong Barangay.[22]

The Solicitor General submits that the COMELEC did not deprive Bautista of due process. Bautista had the chance to be heard and to present his side when he filed a letter to the COMELEC en banc requesting reconsideration of the Resolutions.[23]

This Court has explained the nature of due process in *Stayfast Philippines Corporation v. NLRC*: [24]

The essence of due process is simply the opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.

A formal or trial-type hearing is not at all times and in all instances essential. The requirements are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. What is frowned upon is absolute lack of notice and hearing. x x x (Emphasis supplied)

The opportunity to be heard does not only refer to the right to present verbal arguments in court during a formal hearing.[25] There is due process when a party is able to present evidence in the form of pleadings.[26] However, the COMELEC did not give Bautista such opportunity to explain his side. The COMELEC en banc issued Resolution Nos. 5404 and 5584 without prior notice and hearing.

We cannot ignore the importance of prior notice and hearing. Severe consequences attach to the COMELEC Resolutions which not only ordered the cancellation of the certificate of candidacy of Bautista but also the annulment of his proclamation as Punong Barangay. What is involved here is not just the right to be voted for public office but the right to hold public office. As held in *Sandoval v. Commission on Elections*: [27]

x x x Although the COMELEC is clothed with jurisdiction over the subject matter and issue of SPC No. 98-143 and SPC No. 98-206, we find the exercise of its jurisdiction tainted with illegality. We hold that its order to set aside the proclamation of petitioner is invalid for having been rendered without due process of law. Procedural due process demands prior notice and hearing. Then after the hearing, it is also necessary that the tribunal show substantial evidence to support its ruling. In other words, due process requires that a party be given an opportunity to adduce his evidence to support his side of the case and that the evidence should be considered in the adjudication of the case. The facts show that COMELEC set aside the proclamation of petitioner without benefit of prior notice and hearing and it rendered the questioned order based solely on private respondent's allegations. We held in *Bince, Jr. vs. COMELEC*:

"Petitioner cannot be deprived of his office without due process of law. Although public office is not property under Section 1 of the Bill of Rights of the Constitution, and one cannot acquire a vested right to public office, it is, nevertheless, a protected right. Due process in proceedings before the COMELEC, exercising its quasi-judicial functions, requires due notice and hearing, among others. Thus, although the COMELEC possesses, in appropriate cases, the power to annul or suspend the proclamation of any candidate, we had ruled in *Farinas vs. Commission on Elections*, *Reyes vs. Commission on Elections* and *Gallardo vs. Commission on Elections* that the COMELEC is without power to partially or totally annul a proclamation or suspend the effects of a proclamation without notice and hearing." (Emphasis supplied)

The fact that Bautista was able to file a letter with the COMELEC en banc requesting for reconsideration of the Resolutions is beside the point. To reiterate, the 1993 COMELEC Rules of Procedure prohibit a motion for reconsideration of a COMELEC en banc resolution except in cases involving election offenses.

Respondents likewise submit that there was no need for presentation and evaluation of evidence since the issue of whether Bautista was a registered voter is easily resolved by looking at the COMELEC registration records.[28]

This reasoning fails to consider the instances where a voter may be excluded through inadvertence or registered with an erroneous or misspelled name.[29] Indeed, if it was just a simple matter of looking at the record of registered voters, then the COMELEC would not have included Section 7 (g)[30] in its Resolution No. 4801. This Section allows candidates who are not registered voters to be included in the certified list of candidates until the COMELEC directs otherwise.

Rule 23 of the 1993 COMELEC Rules of Procedure provides for the twin requirements of prior notice and hearing, as follows:

Rule 23 - Petition to Deny Due Course to or Cancel Certificates of Candidacy

Section 1. Grounds for Denial of Certificate of Candidacy. - A petition to deny due course to or cancel, a certificate of candidacy for any elective office may be filed with the Law Department of the Commission by any citizen of voting age or a duly registered political party, organization, or coalition of political parties on the exclusive ground that any material representation contained therein as required by law is false.

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.

Sec. 3. Summary Proceeding. - The petition shall be heard summarily after due notice.

Sec. 4. Delegation of Reception of Evidence. - The Commission may designate any of its officials who are members of the Philippine Bar to hear the case and receive evidence. (Emphasis supplied)

A summary proceeding does not mean that the COMELEC could do away with the requirements of notice and hearing. The COMELEC should have at least given notice to Bautista to give him the chance to adduce evidence to explain his side in the cancellation proceeding. The COMELEC en banc deprived Bautista of procedural due process of law when it approved the report and recommendation of the Law Department without notice and hearing.[31]

Whether Bautista was a registered voter of Barangay Lumbangan when he filed his certificate of candidacy

The events[32] that transpired after the 15 July 2002 elections necessitate the early resolution of this case. The Court deems it proper not to remand the case to the COMELEC to avoid further delay. The Court will resolve this case based on the pleadings submitted by the parties.

Under the Revised Administrative Code,[33] one of the qualifications of an elective municipal officer is that he must be a "qualified voter" in his municipality. Section 2174 of the Revised Administrative Code reads:

Section 2174. Qualifications of elective municipal officer. - An elective municipal officer must, at the time of the election, be a qualified voter in his municipality and must have been resident therein for at least one year, and must not be less than twenty-three years of age. He must also be able to read and write intelligently either English, Spanish, or the local dialect. (Emphasis supplied)

On the other hand, under the Republic Act No. 2370,[34] otherwise known as the Barrio Charter, a candidate for the barrio council[35] must be a "qualified elector." Section 8 of the Barrio Charter reads:

Section 8. Qualifications for election to the barrio council. - Candidates for election to the barrio council:

- (a) Must be a qualified elector and must have been a resident of the barrio for at least six months prior to the election; and
- (b) Must not have been convicted of a crime involving moral turpitude or of a crime which carries a penalty of

at least one year imprisonment. (Emphasis supplied)

Thus, in the 1958 case of *Rocha v. Cordis*,^[36] the Court held that a candidate for an elective municipal office did not have to be a registered voter in the municipality to qualify to run for an elective municipal office. Citing the earlier case of *Yra v. Abaño*,^[37] the Court ruled that the words "qualified elector" meant a person who had all the qualifications provided by law to be a voter and not a person registered in the electoral list. In the same vein, the term "qualified" when applied to a voter does not necessarily mean that a person must be a registered voter.

However, under the Local Government Code of 1991,^[38] which took effect on 1 January 1992, an elective local official, including a Punong Barangay, must not only be a "qualified elector" or a "qualified voter," he must also be a "registered voter."^[39] Section 39 of the Local Government Code provides:

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

(e) Candidates for the position of punong barangay or member of the sangguniang barangay must be at least eighteen (18) years of age on election day.

x x x

These qualifications were reiterated in Section 2 of COMELEC Resolution No. 4801 dated 23 May 2002 which prescribed the guidelines on the filing of certificates of candidacy in connection with the 15 July 2002 elections. Section 2 reads:

Sec. 2. Qualifications. - (a) Candidates for Punong Barangay and Sangguniang Barangay Kagawad must be:

- (1) Filipino citizens;
- (2) At least 18 years old on election day;
- (3) Able to read and write Filipino or any local language or dialect; and
- (4) Registered voters of the barangay where they intend to run for office and residents thereof for at least one (1) year immediately preceding the day of the election. (Emphasis supplied)

Section 7 of COMELEC Resolution No. 4801 likewise requires the Election Officer to verify whether the candidates are registered voters and possess all the qualifications of a candidate. Thus, Section 7 (f) and (g) read:

(f) Before the preparation of the certified lists of candidates it shall be the duty of the Election Officer to: (1) verify whether all candidates for barangay and sangguniang kabataan positions are registered voters of the barangay where they file their certificates of candidacy; and (2) examine the entries of the certificates of candidacy and determine on the basis of said entries whether the candidate concerned possesses all the qualifications of a candidate.

(g) If there are candidates who are not registered voters in the barangay where they run for barangay or sangguniang kabataan positions or do not possess all the other qualifications of a candidate, he shall make the corresponding report by REGISTERED MAIL and by RUSH TELEGRAM to the Law Department of the Commission within three (3) days from the last day for filing the certificates of candidacy, copy furnished the Provincial Election Supervisor and the Regional Election Director. The names of said candidates, however, shall still be included in the certified lists of candidates until the Commission directs otherwise. (Emphasis supplied)

It is thus clear that the law as it now stands requires a candidate for Punong Barangay to be a registered voter of the barangay where he intends to run for office.

Bautista admitted in his affidavit[40] dated 24 August 2002 that he was not a registered voter of Barangay Lumbangan, thus:

A F F I D A V I T

That I, RAYMUNDO A. @ OCA BAUTISTA, of legal age, married, Mechanical Engineer by profession, Filipino citizen and have been residing at Sitio Calamundingan, Barangay Lumbangan, Nasugbu, Batangas, after being duly sworn according to law depose and say:

- That I was born at Barangay Tumulim, Nasugbu, Batangas, on March 15, 1954 and upon reaching the age of four (4) our family transferred to Sitio Calamundingan, Barangay Lumbangan, Nasugbu, Batangas and I have been permanently residing thereat since that time up to the present, and this fact can be attested to by our immediate neighbors.

- That since the time I reached the age of majority, I have participated both in the National and Local Elections up to the year 1995 and as matter of fact I ran for the Office of member of the Municipal Council in the year 1992 Elections.

- Sometime during the late part of the year 1995, I went to the United States of America scouting (sic) for a good job but I was not able to find one so I went home in the year 2000 but again believing that I could land a job in the United States, I again went there but I was not able to get a job therein and so I went back to the Philippines in the year 2001 but I found out that my name was no longer included in the list of registered voters at Barangay Lumbangan, Nasugbu, Batangas.

- Sometime in the year 2002, I personally went to the Office of the Local Election Registrar particularly talking to Miss Josefina P. Jareño in order to register because as I know, to run for the Office of Barangay Chairman, I have to be a registered voter in our Barangay.

- However, I was denied registration because according to her, her Office is not open for registration at any time and I should wait for the General Registration and for that reason I was not able to register.

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- That had I known that there is a provision in Section 52, under paragraph (k) A, when Miss Josefina P. Jareño denied my request for registration as a voter, I would have filed a Petition for Mandamus with the proper Court so that she can be ordered to register me as a voter in Barangay Lumbangan, Nasugbu, Batangas so that any and all technicality may be avoided."(Emphasis supplied)

According to Bautista's affidavit, he was practically out of the country from 1995 until 2001. When the certified list of voters ceased to be effective and operative after the barangay elections in 1997, qualified voters had to register again to vote in any election. Apparently, Bautista failed to register during the general registration of voters conducted by the COMELEC in 1997 since he was still out of the country during that time. Republic Act No. 8189 ("The Voter's Registration Act of 1996") provides for a system of continuing registration of voters. Thus, Bautista should have registered anew in the office of the Election Officer when he came back to the Philippines in 2001 and learned that his name was no longer included in the roster of registered voters. The pertinent provisions of RA No. 8189 read:

SEC. 7. General Registration of Voters. - Immediately after the barangay elections in 1997, the existing certified list of voters shall cease to be effective and operative. For purposes of the May 1998 elections and all elections, plebiscites, referenda, initiatives, and recall subsequent thereto, the Commission shall undertake a general registration of voters before the Board of Election Inspectors on June 14, 15, 21 and 22 and, subject to the discretion of the Commission, on June 28 and 29, 1997 in accordance with this Act.

SEC. 8. System of Continuing Registration of Voters. - The personal filing of application of registration of

voters shall be conducted daily in the office of the Election Officer during regular office hours. No registration shall, however be conducted during the period starting one hundred twenty (120) days before a regular election and ninety (90) days before a special election.

xxx

SEC. 10. Registration of Voters. - A qualified voter shall be registered in the permanent list of voters in a precinct of the city or municipality where he resides to be able to vote in any election. To register as a voter, he shall personally accomplish an application form for registration as prescribed by the Commission in three (3) copies before the Election Officer on any date during office hours after having acquired the qualifications of a voter. (Emphasis supplied)

xxx

It is thus clear that Bautista was remiss in his duty to ensure his right to vote and to be voted for public office. As early as 2001, he was already aware that his name was no longer included in the roster of registered voters. Yet, Bautista chose not to register anew that year despite his knowledge that he needed to register as a voter in the barangay to run for the office of Punong Barangay.

Bautista alleges that his non-registration as a voter of Barangay Lumbangan was due to the refusal of Election Officer Jareño to register him sometime in January 2002.[41] Aside from his bare allegation that he tried to register in January 2002, Bautista did not proffer any other proof like a duly accomplished application form for registration to substantiate his claim that he indeed attempted to register anew. On the other hand, Election Officer Jareño denies Bautista's allegations in her comment filed on 10 October 2002, thus:

COMMENT

COMES NOW Respondent JOSEPINA P. JAREÑO (sic) and to this Honorable Supreme Court by way of comment to the Petition for Certiorari and Prohibition with Prayer for the Issuance of Temporary Restraining Order, filed by herein Petitioner, most respectfully states that:

- Respondent JOSEPINA P. JAREÑO (sic) is the Election Officer of Nasugbu, Batangas, while petitioner, RAYMUNDO A. BAUTISTA was one of the candidates for the Barangay Chairman of Barangay Lumbangan, Nasugbu, Batangas, in the recently concluded barangay elections;
- Based on the records in our files, petitioner was not and is not a registered voter of Barangay Lumbangan or any other barangays in Nasugbu, Batangas;
- There was never an instance during the period starting June 1997 up to December 26, 2001 when registration of voters for the updating of the Voter's Registration Record had been undertaken by the Commission on Elections on an "on again/off again" system, did petitioner RAYMUNDO BAUTISTA come to our office to check or ensure that he is still in the active list of voters of Barangay Lumbangan, i.e., assuming that he was registered as a voter thereof, in the first place;
- The last day of registration of voters (new or transferee) had been last December 26, 2001 and registration shall resume again, this coming September 16, 2002. In the meantime, no general registration nor special registration had been mandated by the Commission on Election (COMELEC, for brevity) between the period December 27, 2001 until September 15, 2002;
- I only met petitioner RAYMUNDO BAUTISTA for the first time when he came to our office to file his Certificate of Candidacy last June 10, 2002, which was the last day set by the COMELEC for the filing of Certificates of Candidacy;

x x x

Bautista was aware when he filed his certificate of candidacy for the office of Punong Barangay that he lacked one of the qualifications - that of being a registered voter in the barangay where he ran for office. He therefore made a misrepresentation of a material fact when he made a false statement in his certificate of candidacy that he was a registered voter in Barangay Lumbangan.[42] An elective office is a public trust. He who aspires for elective office should not make a mockery of the electoral process by falsely representing himself. The importance of a valid certificate of candidacy rests at the very core of the electoral process.[43] Under Section 78 of the Omnibus Election Code, false representation of a material fact in the certificate of candidacy is a ground for the denial or cancellation of the certificate of candidacy. The material misrepresentation contemplated by Section 78 refers to qualifications for elective office. A candidate guilty of misrepresentation may be (1) prevented from running, or (2) if elected, from serving, or (3) prosecuted for violation of the election laws.[44]

Invoking *salus populi est suprema lex*, Bautista argues that the people's choice expressed in the local elections deserves respect. Bautista's invocation of the liberal interpretation of election laws is unavailing. As held in *Aquino v. Commission on Elections*: [45]

In fine, we are left with no choice but to affirm the COMELEC's conclusion declaring herein petitioner ineligible for the elective position as Representative of Makati City's Second District on the basis of respondent commission's finding that petitioner lacks the one year residence in the district mandated by the 1987 Constitution. A democratic government is necessarily a government of laws. In a republican government those laws are themselves ordained by the people. Through their representatives, they dictate the qualifications necessary for service in government positions. And as petitioner clearly lacks one of the essential qualifications for running for membership in the House of Representatives, not even the will of a majority or plurality of the voters of the Second District of Makati City would substitute for a requirement mandated by the fundamental law itself.

Indeed, the electorate cannot amend or waive the qualifications prescribed by law for elective office. The will of the people as expressed through the ballot cannot cure the vice of ineligibility.[46] The fact that Bautista, a non-registered voter, was elected to the office of Punong Barangay does not erase the fact that he lacks one of the qualifications for Punong Barangay.

Whether it was proper to proclaim Alcoreza as Punong
Barangay in view of ineligibility of the winning candidate

Bautista subscribes to the view of the Solicitor General that under the law and jurisprudence, the COMELEC cannot proclaim as winner the second placer in case of ineligibility of the winning candidate.

The Solicitor General submits that the disqualification of the winning candidate Bautista does not result in the proclamation of Alcoreza who obtained the second highest number of votes because Alcoreza was obviously not the choice of the electorate. The Solicitor General emphasized that the COMELEC declared Bautista ineligible for the post of Punong Barangay only after his election and proclamation as the winning candidate.

Respondent Alcoreza, however, alleges that her proclamation as the elected Punong Barangay was legal and valid. Alcoreza claims her case falls under the exception to the rule that the disqualification of the winning candidate does not entitle the candidate with the next higher number of votes to be proclaimed winner. Alcoreza cites *Grego v. COMELEC* [47] which held that the exception is predicated on the concurrence of two assumptions, namely: (1) the one who obtained the highest number of votes is disqualified; and (2) the electorate is fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety but would nonetheless cast their votes in favor of the ineligible candidate.

This Court agrees with the view of the Solicitor General. It is now settled doctrine that the COMELEC cannot

proclaim as winner the candidate who obtains the second highest number of votes in case the winning candidate is ineligible or disqualified.[48] The exception to this well-settled rule was mentioned in *Labo, Jr. v. Commission on Elections*[49] and reiterated in *Grego v. COMELEC*.^[50] However, the facts warranting the exception to the rule do not obtain in the present case.

Although the COMELEC Law Department recommended to deny due course or to cancel the certificate of candidacy of Bautista on 11 July 2002, the COMELEC en banc failed to act on it before the 15 July 2002 barangay elections. It was only on 23 July 2002 that the COMELEC en banc issued Resolution No. 5404, adopting the recommendation of the COMELEC Law Department and directing the Election Officer to delete Bautista's name from the official list of candidates.

Thus, when the electorate voted for Bautista as Punong Barangay on 15 July 2002, it was under the belief that he was qualified. There is no presumption that the electorate agreed to the invalidation of their votes as stray votes in case of Bautista's disqualification.^[51] The Court cannot adhere to the theory of respondent Alcoreza that the votes cast in favor of Bautista are stray votes.^[52] A subsequent finding by the COMELEC en banc that Bautista is ineligible cannot retroact to the date of elections so as to invalidate the votes cast for him.^[53] As held in *Domino v. COMELEC*:^[54]

Contrary to the claim of INTERVENOR, petitioner was not notoriously known by the public as an ineligible candidate. Although the resolution declaring him ineligible as candidate was rendered before the election, however, the same is not yet final and executory. In fact, it was no less than the COMELEC in its Supplemental Omnibus Resolution No. 3046 that allowed DOMINO to be voted for the office and ordered that the votes cast for him be counted as the Resolution declaring him ineligible has not yet attained finality. Thus the votes cast for DOMINO are presumed to have been cast in the sincere belief that he was a qualified candidate, without any intention to misapply their franchise. Thus, said votes can not be treated as stray, void, or meaningless.

The Local Government Code provides for the rule regarding permanent vacancy in the Office of the Punong Barangay, thus:

SEC. 44. Permanent vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor. - If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice-governor, mayor, or vice-mayor, the highest ranking sanggunian member or, in the 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 member, the highest ranking sangguniang barangay member, or in the case of his permanent disability, the second highest ranking sanggunian member, shall become the punong barangay.

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

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

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

For purposes of succession as provided in 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 district in the immediately preceding local election. (Emphasis supplied)

Since Bautista failed to qualify for the position of Punong Barangay, the highest ranking sangguniang barangay member, or in the case of his permanent disability, the second highest ranking sangguniang member, shall become the Punong Barangay.[55]

WHEREFORE, we DISMISS the petition. Petitioner Raymundo A. Bautista is ineligible for the position of Punong Barangay of Barangay Lumbangan for not being a registered voter of Barangay Lumbangan. The proclamation of the second placer Divina Alcoreza as winner in lieu of Bautista is void. Instead, the highest ranking sangguniang barangay member of Barangay Lumbangan shall assume the office of Punong Barangay of Lumbangan for the unexpired portion of the term.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.
Ynares-Santiago, J., on official leave.

[1] Rollo, pp. 32-36.

[2] Ibid., pp. 37- 48.

[3] Ibid., pp. 143-146.

[4] Sec. 7 (g) of COMELEC Resolution No. 4801 dated 23 May 2002 reads:

(g) If there are candidates who are not registered voters in the Barangay where they run for Barangay or Sangguniang Kabataan positions or do not possess all the other qualifications of a candidate, he shall make the corresponding report by REGISTERED MAIL and by RUSH TELEGRAM to the Law Department of the Commission within three (3) days from the last day for filing the certificates of candidacy, copy furnished the Provincial Election Supervisor and the Regional Election Director. The names of said candidates, however, shall still be included in the certified lists of candidates until the Commission directs otherwise.

[5] Rollo, pp. 147-148.

[6] Ibid., pp. 149-151.

[7] The Board of Canvassers of Barangay Lumbangan was composed of respondents Francisca C. Rodriguez as chairperson and Maria G. Canovas and Agripina B. Antig as members.

[8] Certificate of Canvass of Votes and Proclamation of Winning Candidates for Punong Barangay and Kagawad ng Sangguniang Barangay by the Barangay Board of Canvassers (No. 0025550); Rollo, p. 26.

[9] Rollo, p. 103.

[10] Ibid., Rollo, p. 58.

[11] Ibid., p. 31.

[12] Memorandum for Respondents, pp. 12-13; Rollo, pp. 319-320.

[13] *Bagatsing v. COMELEC*, 378 Phil. 585 (1999).

[14] 388 Phil. 560, 566 (2000).

[15] *Faelnar v. People*, 387 Phil. 442 (2000).

[16] Rollo, pp. 218, 298-301.

[17] Ibid., pp. 321-323.

[18] 338 Phil. 484 (1997).

[19] 377 Phil. 497 (1999).

[20] *Canicosa v. COMELEC*, 347 Phil. 189 (1997).

[21] G.R. No. 153945, 4 February 2003.

[22] Rollo, p. 374.

[23] Ibid., pp. 350-352.

[24] G.R. No. 81480, 9 February 1993, 218 SCRA 596, 601.

[25] *Domingo, Jr. v. Commission on Elections*, 372 Phil. 188 (1999).

[26] *Trinidad v. COMELEC*, 373 Phil. 802 (1999).

[27] 380 Phil. 375, 392 (2000).

[28] Rollo, pp. 96, 327-328.

[29] Sections 37 and 38 of Republic Act No. 8189 ("The Voter's Registration Act of 1996") provide for the remedy of voters who were excluded through inadvertence or registered with an erroneous or misspelled name.

[30] *Supra*, note 4.

[31] *Go v. Commission on Elections*, G.R. No. 147741, 10 May 2001, 357 SCRA 739.

[32] The following events transpired after the 15 July 2002 elections: (1) Alcoreza was proclaimed as Punong Barangay in view of the alleged ineligibility of Bautista; (2) Bautista refused to vacate the barangay hall and continued performing his functions as Punong Barangay albeit without receiving compensation; (3) Alcoreza is likewise performing the functions of a Punong Barangay; (4) In a Quo Warranto case filed by Barangay Councilman Armando Bartolome against Bautista, the Municipal Trial Court of Nasugbu rendered a decision dated 25 November 2002 which found Bautista guilty of usurping and unlawfully exercising the position of Punong Barangay and ordered his ouster; (5) Municipal Mayor Apacible issued a memorandum dated 4 February 2003 to all Department Heads and the Chief of Police of Nasugbu, Batangas to entertain only transactions initiated by Alcoreza as the Punong Barangay; (6) On 12 February 2003, the concerned citizens of Barangay Lumbangan (1,246 petitioners) filed a petition for the early resolution of this case; (7) Bautista padlocked the barangay hall in view of the decision of the MTC of Nasugbu; (8) On 19 June 2003, some barangay councilmen, together with some policemen, allegedly forced open the barangay hall by destroying the padlock.

[33] Act No. 2711, which was approved on 10 March 1917.

[34] R.A. No. 2370 took effect on 1 January 1960.

[35] Section 6 of R.A. No. 2370 reads:

Section 6. The barrio council. - In each barrio there shall be organized a barrio council which shall have as members the following:

- (a) a barrio lieutenant;
- (b) a barrio treasurer;

(c) four council lieutenants;

(d) vice barrio lieutenants, in such number as there are sitios in the barrio; or where there are no sitios, one vice barrio lieutenant for every two hundred inhabitants of the barrio: Provided, That no person shall be elected vice barrio lieutenant unless he is a resident of the sitio he shall represent.

[36] 103 Phil. 327 (1958).

[37] 52 Phil. 380 (1928).

[38] R.A. No. 7160.

[39] Similarly, under Article VI, Sections 3 & 6 of the 1987 Constitution, a senator or a congressman must actually be a "registered voter" and not just a "qualified elector" as provided under the 1935 Constitution.

[40] Rollo, pp. 60-61.

[41] Rollo, p. 64.

[42] Rollo, p. 25.

[43] *Miranda v. Abaya*, 370 Phil. 642 (1999).

[44] *Salcedo II v. COMELEC*, 371 Phil. 377 (1999).

[45] G.R. No. 120265, 18 September 1995, 248 SCRA 400, 429.

[46] *Frivaldo v. Commission on Elections*, G.R. No. 87193, 23 June 1989, 174 SCRA 245.

[47] G.R. No. 125955, 19 June 1997, 274 SCRA 481, 501.

[48] *Codilla, Sr. v. De Venecia*, G.R. No. 150605, 10 December 2002; *Trinidad v. COMELEC*, 373 Phil. 802 (1999); *Loreto v. Brion*, 370 Phil. 727 (1999); *Domino v. COMELEC*, 369 Phil. 798 (1999); *Abella v. Commission on Elections*, G.R. No. 100710, 3 September 1991, 201 SCRA 253.

[49] G.R. Nos. 105111 & 105384, 3 July 1992, 211 SCRA 297.

[50] *Supra* note 48.

[51] See *Garvida v. Sales, Jr.*, 338 Phil. 484 (1997).

[52] See *Sunga v. COMELEC*, 351 Phil. 310 (1998).

[53] See *Reyes v. COMELEC*, 324 Phil. 813 (1996).

[54] 369 Phil. 798, 825 (1999).

[55] See *Recabo, Jr. v. Commission on Elections*, 368 Phil. 277 (1999); *Nolasco v. COMELEC*, 341 Phil. 761 (1997); *Labo v. Commission on Elections*, G.R. No. 105111 & 105384, 3 July 1992, 211 SCRA 297.

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