

EN BANC

[G.R. No. 181613, November 25, 2009]

**ROSALINDA A. PENERA, PETITIONER, COMMISSION ON
ELECTIONS AND EDGAR T. ANDANAR, RESPONDENTS.**

R E S O L U T I O N

CARPIO, J.:

We grant Rosalinda A. Penera's (Penera) motion for reconsideration of this Court's Decision of 11 September 2009 (Decision).

The assailed Decision dismissed Penera's petition and affirmed the Resolution dated 30 July 2008 of the COMELEC En Banc as well as the Resolution dated 24 July 2007 of the COMELEC Second Division. The Decision disqualified Penera from running for the office of Mayor in Sta. Monica, Surigao del Norte and declared that the Vice-Mayor should succeed Penera.

In support of her motion for reconsideration, Penera submits the following arguments:

1. Penera was not yet a candidate at the time of the incident under Section 11 of RA 8436 as amended by Section 13 of RA 9369.
2. The petition for disqualification failed to submit convincing and substantial evidence against Penera for violation of Section 80 of the Omnibus Election Code.
3. Penera never admitted the allegations of the petition for disqualification and has consistently disputed the charge of premature campaigning.
4. The admission that Penera participated in a motorcade is not the same as admitting she engaged in premature election campaigning.

Section 79(a) of the Omnibus Election Code defines a "candidate" as "any person aspiring for or seeking an elective public office, who has filed a certificate of candidacy x x x." The second sentence, third paragraph, Section 15 of RA 8436, as amended by Section 13 of RA 9369, provides that "[a]ny person who files his certificate of candidacy within [the period for filing] shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy." The immediately succeeding *proviso* in the same third paragraph states that "unlawful acts or omissions applicable to a candidate shall take effect only upon the start of the aforesaid campaign period." These two provisions determine the resolution of this case.

The Decision states that "[w]hen the campaign period starts and [the person who filed his certificate of candidacy] proceeds with his/her candidacy, his/her intent

turning into actuality, **we can already consider his/her acts, after the filing of his/her COC and prior to the campaign period, as the promotion of his/her election as a candidate, hence, constituting premature campaigning, for which he/she may be disqualified.**"^[1]

Under the Decision, a candidate may already be liable for premature campaigning after the filing of the certificate of candidacy but **even before the start of the campaign period**. From the filing of the certificate of candidacy, even long before the start of the campaign period, the Decision considers the partisan political acts of a person so filing a certificate of candidacy **"as the promotion of his/her election as a candidate."** Thus, such person can be disqualified for premature campaigning for acts done before the start of the campaign period. **In short, the Decision considers a person who files a certificate of candidacy already a "candidate" even before the start of the campaign period.**

The assailed Decision is contrary to the clear **intent and letter** of the law.

The Decision reverses *Lanot v. COMELEC*,^[2] which held that **a person who files a certificate of candidacy is not a candidate until the start of the campaign period**. In *Lanot*, this Court explained:

Thus, the essential elements for violation of Section 80 of the Omnibus Election Code are: (1) a person engages in an election campaign or partisan political activity; (2) the act is designed to promote the election or defeat of a particular candidate or candidates; (3) the act is done outside the campaign period.

The second element requires the existence of a "candidate." Under Section 79(a), a candidate is one who "has filed a certificate of candidacy" to an elective public office. Unless one has filed his certificate of candidacy, he is not a "candidate." The third element requires that the campaign period has not started when the election campaign or partisan political activity is committed.

Assuming that all candidates to a public office file their certificates of candidacy on the last day, which under Section 75 of the Omnibus Election Code is the day before the start of the campaign period, then no one can be prosecuted for violation of Section 80 for acts done prior to such last day. Before such last day, there is no "particular candidate or candidates" to campaign for or against. On the day immediately after the last day of filing, the campaign period starts and Section 80 ceases to apply since Section 80 covers only acts done "outside" the campaign period.

Thus, if all candidates file their certificates of candidacy on the last day, Section 80 may only apply to acts done on such last day, which is before the start of the campaign period and after at least one candidate has filed his certificate of candidacy. This is perhaps the reason why those running for elective public office usually file their certificates of candidacy on the last day or close to the last day.

There is no dispute that Eusebio's acts of election campaigning or partisan political activities were committed outside of the campaign period. The only question is whether Eusebio, who filed his certificate of candidacy on 29 December 2003, was a "candidate" when he committed those acts before the start of the campaign period on 24 March 2004.

Section 11 of Republic Act No. 8436 ("RA 8436") moved the deadline for the filing of certificates of candidacy to 120 days before election day. Thus, the original deadline was moved from 23 March 2004 to 2 January 2004, or 81 days earlier. The crucial question is: did this change in the deadline for filing the certificate of candidacy make one who filed his certificate of candidacy before 2 January 2004 immediately liable for violation of Section 80 if he engaged in election campaign or partisan political activities prior to the start of the campaign period on 24 March 2004?

Section 11 of RA 8436 provides:

SECTION 11. Official Ballot. - The Commission shall prescribe the size and form of the official ballot which shall contain the titles of the positions to be filled and/or the propositions to be voted upon in an initiative, referendum or plebiscite. Under each position, the names of candidates shall be arranged alphabetically by surname and uniformly printed using the same type size. A fixed space where the chairman of the Board of Election Inspectors shall affix his/her signature to authenticate the official ballot shall be provided.

Both sides of the ballots may be used when necessary.

For this purpose, the deadline for the filing of certificate of candidacy/petition for registration/ manifestation to participate in the election shall not be later than one hundred twenty (120) days before the elections:

Provided, That, any elective official, whether national or local, running for any office other than the one which he/she is holding in a permanent capacity, except for president and vice-president, shall be deemed resigned only upon the start of the campaign period corresponding to the position for which he/she is running: Provided, further, That, unlawful acts or omissions applicable to a candidate shall take effect upon the start of the aforesaid campaign period: Provided, finally, That, for purposes of the May 11, 1998 elections, the deadline for filing of the certificate of candidacy for the positions of President, Vice-President, Senators and candidates under the party-list system as well as petitions for registration and/or manifestation to participate in the party-list system shall be on February 9, 1998 while the deadline for the filing of certificate of candidacy for other positions shall be on March 27, 1998.

The official ballots shall be printed by the National Printing Office and/or the *Bangko Sentral ng Pilipinas* at the price comparable with that of private printers under proper security measures which the Commission shall adopt. The Commission may contract the services of private printers upon certification by the National Printing Office/*Bangko Sentral ng Pilipinas* that it cannot meet the printing requirements. Accredited political parties and deputized citizens' arms of the Commission may assign watchers in the printing, storage and distribution of official ballots.

To prevent the use of fake ballots, the Commission through the Committee shall ensure that the serial number on the ballot stub shall be printed in magnetic ink that shall be easily detectable by inexpensive hardware and shall be impossible to reproduce on a photocopying machine, and that identification marks, magnetic strips, bar codes and other technical and security markings, are provided on the ballot.

The official ballots shall be printed and distributed to each city/municipality at the rate of one (1) ballot for every registered voter with a provision of additional four (4) ballots per precinct.

Under Section 11 of RA 8436, the only purpose for the early filing of certificates of candidacy is to give ample time for the printing of official ballots. This is clear from the following deliberations of the Bicameral Conference Committee:

SENATOR GONZALES. Okay. Then, how about the campaign period, would it be the same[,] uniform for local and national officials?

THE CHAIRMAN (REP. TANJUATCO). Personally, I would agree to retaining it at the present periods.

SENATOR GONZALES. But the moment one files a certificate of candidacy, he's already a candidate, and there are many prohibited acts on the part of candidate.

THE CHAIRMAN (REP. TANJUATCO). Unless we. . . .

SENATOR GONZALES. And you cannot say that the campaign period has not yet began (sic).

THE CHAIRMAN (REP. TANJUATCO). If we don't provide that the filing of the certificate will not bring about one's being a candidate.

SENATOR GONZALES. If that's a fact, the law cannot change a fact.

THE CHAIRMAN (REP. TANJUATCO). **No, but if we can provide that the filing of the certificate of candidacy will not result in that official vacating his position, we can also provide that insofar he is concerned, election period or his being a candidate will not yet commence. Because here, the reason why we are doing an early filing is to afford enough time to prepare this machine readable ballots.**

So, with the manifestations from the Commission on Elections, Mr. Chairman, the House Panel will withdraw its proposal and will agree to the 120-day period provided in the Senate version.

THE CHAIRMAN (SENATOR FERNAN). Thank you, Mr. Chairman.

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SENATOR GONZALES. How about prohibition against campaigning or doing partisan acts which apply immediately upon being a candidate?

THE CHAIRMAN (REP. TANJUATCO). **Again, since the intention of this provision is just to afford the Comelec enough time to print the ballots, this provision does not intend to change the campaign periods as presently, or rather election periods as presently fixed by existing law.**

THE ACTING CHAIRMAN (SEN. FERNAN). So, it should be subject to the other prohibition.

THE CHAIRMAN (REP. TANJUATCO). That's right.

THE ACTING CHAIRMAN (SEN. FERNAN). Okay.

THE CHAIRMAN (REP. TANJUATCO). In other words, actually, there would be no conflict anymore because we are talking about the 120-day period before election as the last day of filing a certificate of candidacy, election period starts 120 days also. So that is election period already. But he will still not be considered as a candidate.

Thus, because of the early deadline of 2 January 2004 for purposes of printing of official ballots, Eusebio filed his certificate of candidacy on 29 December 2003. Congress, however, never intended the filing of a certificate of candidacy before 2 January 2004 to make the person filing to become immediately a "candidate" for purposes other than the printing of ballots. This legislative intent prevents the immediate application of Section 80 of the Omnibus Election Code to those filing to