

EN BANC

[G.R. NO. 163776, April 24, 2007]

REV. FR. NARDO B. CAYAT, PETITIONER, VS. COMMISSION ON ELECTIONS (FIRST DIVISION), COMMISSION ON ELECTIONS (EN BANC), AND THOMAS R. PALILENG, SR., RESPONDENTS.

[G.R. NO. 165736]

REV. FR. NARDO B. CAYAT, PETITIONER, VS. COMMISSION ON ELECTIONS (FIRST DIVISION), COMMISSION ON ELECTIONS (EN BANC), AND THOMAS R. PALILENG, SR., RESPONDENTS.

FELISEO K. BAYACSAN, INTERVENOR.

D E C I S I O N

CARPIO, J.:

The Case

For our resolution are two petitions for certiorari filed by Rev. Fr. Nardo B. Cayat (Cayat). G.R. No. 163776 is a petition for certiorari^[1] of the Resolution dated 12 April 2004^[2] and of the Order dated 9 May 2004^[3] of the First Division of the Commission on Elections (COMELEC First Division) in SPA Case No. 04-152. The 12 April 2004 Resolution cancelled the certificate of candidacy of Cayat as mayoralty candidate of Buguias, Benguet in the 10 May 2004 local elections. The 9 May 2004 Order denied Cayat's motion for reconsideration for failure to pay the required filing fee.

G.R. No. 165736 is a petition for certiorari^[4] of the Order dated 25 October 2004^[5] of the COMELEC First Division also in SPA Case No. 04-152. The 25 October 2004 Order granted the motion for execution of judgment filed by Thomas R. Palileng, Sr. (Palileng) and annulled Cayat's proclamation. The 25 October 2004 Order also directed (1) the COMELEC Law Department to implement the dispositive portion of the 12 April 2004 Resolution; (2) the Regional Election Director of the Cordillera Autonomous Region (CAR) to create a new Municipal Board of Canvassers (MBOC); (3) the new MBOC to convene and prepare a new Certificate of Canvass for Mayor of Buguias, Benguet by deleting Cayat's name and to proclaim Palileng as the duly elected Mayor of Buguias, Benguet. Feliseo K. Bayacsan (Bayacsan), duly elected Vice-Mayor of Buguias, Benguet, filed a petition-in-intervention in G.R. No. 165736.

The Facts

Cayat and Palileng were the **only** candidates for the mayoralty post in Buguias, Benguet in the 10 May 2004 local elections. Cayat filed his certificate of candidacy on 5 January 2004. On 26 January 2004, Palileng filed a petition for disqualification

against Cayat before the COMELEC Regional Election Office in Baguio City. Docketed as SPA (PES) No. C04-001, Palileng's petition alleged that:

3. On January 05, 2004, [Cayat] filed his Certificate [of] Candidacy for Mayor for the Municipality of Buguias, Benguet, Philippines alleging among others as follows:

"I AM ELIGIBLE for the office [I] seek to [be] elected, x x x. I hereby certify that the facts stated herein are true and correct of my own personal knowledge."

x x x (Underscoring supplied).

Copy of his Certificate of Candidacy is hereto attached and marked as **ANNEX "A"**;

4. The truth of the matter being that [Cayat] is not eligible to run as Mayor having been convicted by final judgment for a criminal offense by the Municipal Trial Court of Baguio City, Philippines, Branch 2, for the Crime of Forcible Acts of Lasciviousness docketed as Criminal Case Number 110490. Copies of the Information and the Order of conviction dated October 03, 2003 is [sic] hereto attached and marked as **ANNEX "B" and "C"**;
5. In fact, [Cayat] is still under probation at the time he filed his Certificate of Candidacy on January 05, 2004 after the Honorable Court granted his application for probation on November 06, 2003. Copies of the Application for probation date[d] October 07, 2003 and the Order granting the probation is [sic] hereto attached and marked as **ANNEXES "D" and "E"**;
6. Despite assumption of obligation imposed by this oath that the facts stated in his Certificate of Candidacy are true to the best of his knowledge, [Cayat] made misrepresentations and committed acts of perjury when he declared that he is eligible for the said office while in truth and in fact, Respondent was convicted in the above-mentioned Criminal Complaint;
7. At the time of filing his Certificate of Candidacy, [Cayat] is disqualified to [sic] said office as Mayor as he is still serving his sentence and/or disqualification was not yet removed or cured[.]^[6]
(Emphasis in the original)

Atty. Julius D. Torres (Atty. Torres), COMELEC Provincial Election Supervisor for Baguio-Benguet, served summons on Cayat by telegram through the Telecommunications Office on 26 January 2004. However, Cayat did not personally receive the telegram. The Telecommunications Office of Abatan, Buguias delivered the telegram to Ferdinand Guinid (Guinid). Atty. Torres also instructed Mr. Francis Likigan, Election Officer of Buguias, Benguet, to personally inform Cayat to file his answer within three days from receipt of notice. Cayat did not file an answer.

The Ruling of the COMELEC

Despite Cayat's non-participation, Atty. Torres proceeded with SPA (PES) No. C04-

001. Palileng filed his position paper on 16 February 2004. Atty. Torres then resolved the issues based on available records. Atty. Torres also submitted the entire record of the case together with his findings and recommendation to the Office of the Clerk of the COMELEC on 24 February 2004. Pertinent portions of Atty. Torres' report read:

It is important to note that based on the petition, [Palileng] seeks to disqualify [Cayat] for material misrepresentation in his certificate of candidacy. This can be deduced from the fact that the petitioner cited in his petition that the respondent declared that he is eligible for the office he is seeking to be elected where in fact, [Cayat] is not eligible due to his conviction of a criminal offense. This being [the case,] the petition should have been a petition to deny due course or to cancel certificate of candidacy which should have been filed within five (5) days from the last day of filing certificates of candidacy. Obviously, a petition to deny due course could no longer be filed at the time the petition was received.

However, it is important that the petition alleged the disqualification of the respondent by reason of his conviction of a criminal offense, which is the main reason why the petitioner filed this case. On this note, the applicable provision of law is now Sec. 40(a) of R.A. 7160 otherwise known as the Local Government Code. Said provision of law reads:

Sec. 40. Disqualifications. The following persons are disqualified from running fro [sic] any elective local position:

- (a) Those sentenced by final judgment for an offense involving moral turpitude for an offense punishable by one (1) year or more of imprisonment within [two] (2) years after serving sentence;
- (b) xxx xxx xxx

With this, the issue of disqualification rests on Sec. 40(a) of the Local Government Code and not on the material misrepresentation in the certificate of candidacy.

The issue now to be resolved is whether or not the crime of Forcible Acts of Lasciviousness, to which [Cayat] was convicted by final judgment, is a crime involving moral turpitude so as to bring the issue within the coverage of Section 40(a) of the Local Government Code.

The conviction of [Cayat] was never questioned. In fact [Cayat] accepted his conviction by applying for probation which was granted on November 6, 2003. It is already well settled that a judgment of conviction in a criminal case ipso facto attains finality when the accused applies for probation. This brings us to the issue of moral turpitude.

Based on the Information filed, [Cayat] was convicted of Forcible Acts of Lasciviousness when he, with lewd desire and/or with intention to obtain sexual gratification, did then and there willfully, unlawfully and feloniously hold the complainant's [AAA] arm which he placed on his crotch, grab[bed] and embraced her, as well as kiss[ed] her on the lips and mashed her breasts and performed similar acts of indecency, with

force and intimidation and against the will of complainant.

Moral turpitude had been defined as everything which is done contrary to justice, modesty, or good morals; an act of baseness, vileness or depravity in the private and social duties which a man owes his fellowmen, or to society in general, contrary to justice, honesty, modesty or good morals. (IRRI vs[.] NLRC, May 12, 1993)

Moral turpitude implies something immoral in itself, regardless of the fact that it is punishable by law or not. It is not merely mala prohibita, but the act itself must be inherently immoral. The doing of the act itself, and not its prohibition by statute fixes the moral turpitude. Moral turpitude does not, however, include such acts as are not of themselves immoral but those initially lies in their being positively prohibited (Dela Torre vs[.] COMELEC and Marcial Villanueva, G.R. No. 121592, July 5, 1996).

From the definition of moral turpitude, it can be determined that the acts of [Cayat] involved moral turpitude. His acts fell short of his inherent duty of respecting his fellowmen and the society. This was aggravated by the fact that [Cayat] is a priest. The crime of acts of lasciviousness clearly involves moral turpitude.

Therefore, the respondent is convicted of a crime involving moral turpitude. Applying Sec. 40(a) of the Local Government Code, it is recommended that [Cayat] be disqualified from running as Mayor of the Municipality of Buguias, Benguet.^[7]

In its Resolution of 12 April 2004 of the case docketed as SPA Case No. 04-152, the COMELEC First Division found no compelling reason to disturb Atty. Torres' findings and consequently cancelled Cayat's certificate of candidacy. The dispositive portion of the COMELEC First Division's Resolution reads:

WHEREFORE, premises considered, the Commission RESOLVED as it hereby RESOLVES to CANCEL the Certificate of Candidacy of Respondent REV. FATHER NARDO B. CAYAT.

The Law Department is directed to CANCEL the Certificate of Candidacy of REV. FR. NARDO B. CAYAT as mayoralty candidate in Buguias, Benguet in connection with the May 10, 2004 Elections.

SO ORDERED.^[8]

On 13 April 2004, Cayat received a telegram from the Telecommunications Office through an unnamed person. Apparently, the Telecommunications Office asked the unnamed person to deliver the telegram to Cayat. In his affidavit, Cayat stated that on 13 April 2004, someone gave "me a telegram which I received. Said telegram which I read later, informed me that **the COMELEC will promulgate its decision on April 12, 2004**, at the Comelec Session Hall in Intramuros, Manila."^[9]

The officer in charge of the Telecommunications Office in Buguias, Benguet, Mr. Rufino G. Cabato, certified that he delivered the telegram to Guinid. He further stated that Guinid, Cayat's cousin, voluntarily accepted to deliver the telegram to

Cayat.

Cayat filed a motion for reconsideration before the COMELEC En Banc on 16 April 2004. Cayat argued that the COMELEC First Division Resolution of 12 April 2004 is void because the COMELEC did not acquire jurisdiction over him. Cayat also argued that Section 5 of COMELEC Resolution No. 6452 (Resolution No. 6452) allowing service of summons by telegram is void.

In an order dated 9 May 2004, the COMELEC First Division dismissed Cayat's motion for reconsideration for failure to pay the required filing fee. In the local elections held on 10 May 2004, Cayat's name remained on the COMELEC's list of candidates. In the Certificate of Canvass of Votes dated 12 May 2004, Cayat received 8,164 votes.^[10] Palileng, on the other hand, received 5,292 votes.^[11] Cayat was thus proclaimed the duly elected Mayor of Buguias, Benguet. Cayat took his oath of office on 17 May 2004.

Meanwhile, on 13 May 2004, Cayat received a photocopy of the 9 May 2004 order of the COMELEC First Division denying his motion for reconsideration for his failure to pay the filing fee. On 26 May 2004, Cayat filed the petition docketed as G.R. No. 163776 before this Court.

On 29 July 2004, pending the resolution of G.R. No. 163776, Palileng filed a petition for annulment of proclamation with a prayer for the issuance of an injunctive relief, docketed as SPC No. 04-043, against the MBOC of Buguias and Cayat before the COMELEC Second Division. On 28 August 2004, the COMELEC Second Division dismissed Palileng's petition pursuant to COMELEC Omnibus Resolution No. 7257 (Resolution No. 7257). Resolution No. 7257 enumerated the cases which survived from among those filed before the Clerk of the COMELEC in the 10 May 2004 elections and which required proceedings beyond 30 June 2004.^[12]

On 29 July 2004, pending resolution by the COMELEC of SPC No. 04-043, Palileng also filed a motion for execution of judgment in SPA Case No. 04-152. On 10 August 2004, the COMELEC First Division issued an order setting on 18 August 2004 the hearing on the motion for execution. Only Palileng's counsel appeared during the hearing. The parties were instructed to file their respective memoranda within five days. In an order dated 25 October 2004, the COMELEC First Division granted the motion for execution and disposed of the case as follows:

WHEREFORE, premises considered, the Commission (First Division) hereby GRANTS the instant Motion for Execution of Judgment and ANNULS the proclamation of Respondent Rev. Fr. Nardo B. Cayat. Accordingly, it directs as follows:

1. For the Law Department to implement the disposition of this Commission (First Division) in its Resolution promulgated last April 12, 2004 and affirmed when it denied Respondent's Motion for Reconsideration in its Order of May 9, 2004, for it to "CANCEL the Certificate of Candidacy of Rev. Father Nardo B. Cayat as mayoralty candidate in Buguias, Benguet in connection with the May 10, 2004 Elections["];