

EN BANC

[G.R. No. 235058, September 04, 2018]

CONSERTINO C. SANTOS, PETITIONER, VS. COMMISSION ON ELECTIONS (COMELEC) EN BANC AND JENNIFER ANTIQUERA ROXAS, RESPONDENTS.

[G.R. NO. 235064]

RICARDO ESCOBAR SANTOS AND MA. ANTONIA CARBALLO CUNETA, PETITIONERS, VS. COMMISSION ON ELECTIONS AND JENNIFER ANTIQUERA ROXAS, RESPONDENTS.

D E C I S I O N

GESMUNDO, J.:

These are petitions for *certiorari* and prohibition with urgent prayer for the issuance of a temporary restraining order (*TRO*) and/or status quo ante order and/or preliminary injunction seeking to annul and set aside the November 8, 2017 Writ of Execution^[1] of the Commission on Elections (*COMELEC-En Banc*) in SPA Case No. 15-029 (DC), a case for declaration of a nuisance candidate.

The Antecedents

On October 14, 2015, Jennifer Antiquera Roxas (*respondent*) filed a certificate of candidacy for the position of member of the *Sangguniang Panlungsod* for the First District of Pasay City for the May 9, 2016 National and Local Elections.

On October 21, 2015, respondent filed a petition for disqualification against Rosalie Isles Roxas (*Rosalie*) before the COMELEC praying that the latter be declared a nuisance candidate because her certificate of candidacy (*COC*) was only filed for the sole purpose of causing confusion among the voters by the similarity of their names. She pointed out that Rosalie stated that her nickname was "Jenn-Rose," to impersonate the former, when Rosalie's real nickname was actually "Saleng."

Respondent also argued that Rosalie's intent to confuse the voters was apparent because she chose the name "Roxas Jenn-Rose" to appear in the official ballot even though respondent, a re-electionist candidate, was already using the name "Roxas Jenny" for election purposes.

After the parties filed their respective memoranda, the case was submitted for resolution.

In its Resolution^[2] dated March 30, 2016, the COMELEC Second Division granted the petition and declared Rosalie a nuisance candidate. It found that Rosalie

suspiciously indicated her name in the ballot to be "Roxas Jenn-Rose," which was strikingly similar with respondent's name in the ballot as "Roxas Jenny." The COMELEC also observed that the nickname "Jenn-Rose" did not resemble the name of Rosalie as her real nickname was actually "Saleng." It further opined that Rosalie was not financially capable of sustaining the rigors of waging a campaign. COMELEC concluded that the candidacy of Rosalie was clearly meant to cause confusion among the voters with respect to respondent's name and that Rosalie had no *bona fide* intention to run for office. The dispositive portion of the resolution states:

WHEREFORE, the Petition is **GRANTED**. Accordingly, **ROSALIE ISLES ROXAS**, is hereby declared a **NUISANCE CANDIDATE** and her Certificate of Candidacy for Mernber, Sangguiniang [Panlungsod] of Pasay City for the May 9, 2016 National and Local Elections is hereby **CANCELLED**.

SO ORDERED.^[3]

On April 18, 2016, Rosalie filed a motion for reconsideration, consisting of three (3) pages, before the COMELEC.

While the motion for reconsideration was pending with the COMELEC, the National and Local Elections proceeded on May 9, 2016. The City Board of Canvassers^[4] stated the following results of the elections:

Names	Votes Garnered	Ranking
Calixto, Mark	51,369	1
Advincula, Jerome	45,986	2
Cuneta, Ma. Antonia	41,835	3
Alvina, Abet	36,994	4
Santos, Ricardo	35,756	5
Santos, Consertino	34,291	6
Roxas, Jenny	33,738	7
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Roxas, Jenn-Rose	13,328	14

The top six (6) candidates were proclaimed as duly elected members of the First District of the *Sangguniang Panlungsod* of Pasay City. Respondent was not included because she ranked in 7th place; while Rosalie ranked in 14th place with 13,328 votes.

On May 20, 2016, respondent filed an Election Protest *Ad Cautelam*^[5] against Consertino C. Santos (*Santos*) before the COMELEC praying, among others, that the votes cast for Rosalie, who was declared a nuisance candidate, be credited to her, that the proclamation of Santos as a member of the *Sangguniang Panlungsod* for the First District of Pasay be annulled, and that she be proclaimed as the winning

candidate for the *Sangguniang Panlungsod* of First District of Pasay City. Later, respondent amended her protest and added Jerome Advincula, Alberto Alvina, Ma. Antonia Carballo Cuneta (*Antonia*) and Ricardo Escobar Santos (*Ricardo*), as they were also proclaimed as members of the *Sangguniang Panlungsod*.

Meanwhile, on July 22, 2016, or more than two (2) months after the elections, the COMELEC-En Banc issued a Resolution^[6] denying Rosalie's motion for reconsideration as follows:

WHEREFORE, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit. The Resolution dated 30 March 2016 of the Commission (Second Division) is hereby **AFFIRMED**.

SO ORDERED.^[7]

The process server of COMELEC attempted to personally serve the July 22, 2016 resolution to the counsel of Rosalie on July 27, 2016 and August 18, 2016. However, despite earnest efforts, the resolution was not served because the office of Rosalie's counsel was always closed and the guard on duty refused to receive the same.

On November 14, 2016, respondent filed a motion for execution. In its November 17, 2016 order, the COMELEC-En Banc considered the July 22, 2016 resolution as served. In its Certificate of Finality^[8] dated February 15, 2017, the COMELEC-En Banc declared its July 22, 2016 resolution final and executory.

On March 31, 2017, Ricardo, who was not a party in the nuisance case, filed a Manifestation of Grave Concern with Omnibus Motion [i. To admit attached strong opposition; ii. To defer issuance of writ of execution while this motion is pending; iii. To limit the tenor of the writ of execution to a declaration that respondent is a nuisance candidate; and iv. To immediately set the instant motion for hearing].^[9]

On April 4, 2017, Ricardo filed an Extremely Urgent Motion to Set the Case for Hearing.^[10]

On April 4, 2017, the COMELEC-En Banc issued a Writ of Execution^[11] (*first writ of execution*) to implement the March 30, 2016 and July 22, 2016 resolutions, to wit:

NOW THEREFORE, you are hereby **DIRECTED** to immediately implement this Writ of Execution by serving a copy hereof together with certified true copy of the Resolutions of the Second Division, and of the *En Banc*, of this Commission, dated 30 March 2016 and 22 July 2016, respectively, upon respondent **ROSALIE ISLES ROXAS** and to submit a return of service thereof to the Clerk of the Commission.

For this purpose, the Commission hereby **DIRECTS**, after due notice to the parties, the Special City Board of Canvassers (SCBOC) of Pasay City, composed of:

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to do the following:

1. **CONVENE** on April 20, 2017, 10:00 a.m., at the Comelec Session Hall, 8th Floor, Palacio del Gobernador Building, Intramuros, Manila, with notice to all affected parties;
2. **COUNT** the Thirteen Thousand Three Hundred Twenty-Eight (13,328) votes cast for [Rosalie] in favor of the [respondent] and **AMEND** the total number of votes garnered by the latter to Forty Seven Thousand Sixty-Six (47,066); and
3. **SUBMIT**, within three (3) days from reconvening, a report to the Commission *En Banc* on the total number of votes garnered by all the affected candidates for the position of the Sangguniang Panlungsod of Pasay City and await for further orders;

Accordingly, Dir. Ester Villaflor-Roxas is directed to submit before the Special City Board of Canvassers (SCBOC) a certified true copy of the votes of candidates in the May 9, 2016 National and Local Elections.

SO ORDERED.^[12]

On April 20, 2017, the Special City Board of Canvassers of Pasay City (SCBOC) convened and counted 13,328 votes for respondent and consequently amended the statement of votes relevant to the position of members of the *Sangguniang Panlungsod* for the May 9, 2016 National and Local Elections.

Meanwhile, on April 24, 2017, Ricardo filed a separate Petition for Annulment of the Illegal Proceedings of the Special Board of Canvassers of Pasay City with Extremely Urgent Prayer for Issuance of Status Quo Ante Order and Suspension of the Effects of the Illegal Proceedings.^[13] The case was docketed as SPC No. 17-001.

In the nuisance case, on April 25, 2017, Ricardo filed a Manifestation with Omnibus Motion [i. To quash the writ of execution issued in this case; and ii. To admit the foregoing submission].^[14]

On October 25, 2017, Ricardo also filed an Extremely Urgent Manifestation with Motion^[15] where he reiterated that the first writ of execution had been rendered moot by the election protest filed by respondent. On November 3, 2017, Ricardo filed a Reiterative Omnibus Motion^[16] requesting/praying that the SCBOC be directed to cease and desist from recanvassing the votes.

On November 8, 2017, the *COMELEC-En Banc* issued its Order^[17] denying the

motions of Ricardo for lack of merit and considering that there were other actions pending before the COMELEC that would sufficiently address the issues raised.

On the same day, the *COMELEC-En Banc* issued another writ of execution (*second writ of execution*), which states:

NOW THEREFORE, you are hereby **DIRECTED** to immediately implement this Writ of Execution by serving a copy hereof together with certified true copy of the Resolutions of the Second Division and of the *En Banc*, of this Commission. dated 30 March 2016 and 22 July 2016, respectively, upon respondent **ROSALIE ISLES ROXAS** and to submit a return of service thereof to the Clerk of the Commission.

For this purpose, the Commission hereby **DIRECTS**, after due notice to the affected parties, the Special City Board of Canvassers for the First District of Pasay City, composed of:

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to do the following:

1. **CONVENE** on 5 December 2017, 3:00p.m., at the Comelec Session Hall, 8th Floor, Palacio del Gobernador Building, Intramuros, Manila;
2. **ANNUL** the proclamation of Jerome Ruiz Advincula, Ma. Antonia Carballo Cuneta, Alberto Cerdeña Alvina, Ricardo Escobar Santos, and Consertino Claudio Santos as the 2nd, 3rd, 4th, 5th and 6th Members of the Sangguniang Panlungsod for the First District of Pasay City;
3. **AMEND/CORRECT** the Certificate of Canvass of Votes and Proclamation of Sangguniang Panlungsod Members for the First District of Pasay City based on the Amended Statement of Votes by Precinct.
4. **PROCLAIM** the following as the duly elected Members of the Sangguniang Panlungsod Members for the First District of Pasay City:

Names of Candidates	Number of Votes	Ranking
Calixto, Mark Anthony Aguas	51,369	1
Roxas, Jennifer Antiquera	47,066	2
Advincula, Jerome Ruiz	45,986	3
Cuneta, Ma. Antonia	41,835	4