

## EN BANC

[ G.R. No. 227158, April 18, 2017 ]

### JOSEPH C. DIMAPILIS, PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.

#### DECISION

##### PERLAS-BERNABE, J.:

Before the Court is a petition for *certiorari*<sup>[1]</sup> with urgent prayer for the issuance of a Temporary Restraining Order and/or a Status *Quo Ante* Order and/or a Writ of Preliminary Injunction, assailing the Resolutions dated April 11, 2016<sup>[2]</sup> and August 31, 2016<sup>[3]</sup> of respondent Commission on Elections (COMELEC) in SPA No. 13-436 (BRGY) (MP), which cancelled the Certificate of Candidacy (CoC) filed by petitioner Joseph C. Dimapilis (petitioner) for the position of *Punong Barangay* of Barangay Pulung Maragul, Angeles City (Brgy. Pulung Maragul) for the October 28, 2013 Barangay Elections (2013 Barangay Elections), annulled his proclamation as the winner, and directed the Barangay Board of Canvassers to reconvene and proclaim the qualified candidate who obtained the highest number of votes as the duly-elected official for the said post.

#### The Facts

Petitioner was elected as *Punong Barangay* of Brgy. Pulung Maragul in the October 2010 Barangay Elections. He ran for re-election for the same position in the 2013 Barangay Elections, and filed his CoC<sup>[4]</sup> on October 11, 2013, declaring under oath that he is "eligible for the office [he seeks] to be elected to." Ultimately, he won in the said elections and was proclaimed as the duly elected *Punong Barangay* of Brgy. Pulung Maragul on October 29, 2013.<sup>[5]</sup>

On even date, the COMELEC Law Department filed a Petition for Disqualification<sup>[6]</sup> against petitioner pursuant to Section 40 (b)<sup>[7]</sup> of Republic Act No. 7160,<sup>[8]</sup> otherwise known as the "Local Government Code of 1991" (LGC). It claimed that petitioner was barred from running in an election<sup>[9]</sup> since he was suffering from the accessory penalty of perpetual disqualification to hold public office as a consequence of his dismissal from service<sup>[10]</sup> as then *Kagawad* of Brgy. Pulung Maragul, after being found guilty, along with others, of the administrative offense of Grave Misconduct, in a Consolidated Decision<sup>[11]</sup> dated June 23, 2009 (OMB Consolidated Decision) and an Order<sup>[12]</sup> dated November 10, 2009 (collectively, OMB rulings) rendered by the Office of the Ombudsman (OMB) in OMB-L-A-08-0401-G, and allied cases.<sup>[13]</sup>

On December 17, 2013, the COMELEC Second Division issued an Order<sup>[14]</sup> directing

petitioner to file his answer.

In his Verified Answer *cum* Memorandum<sup>[15]</sup> dated February 24, 2014, petitioner averred that the petition should be dismissed, considering that: (a) while the petition prayed for his disqualification, it partakes the nature of a petition to deny due course to or cancel CoC under Section 78<sup>[16]</sup> of the Omnibus Election Code of the Philippines (OEC),<sup>[17]</sup> and combining these two distinct and separate actions in one petition is a ground for the dismissal of the petition<sup>[18]</sup> pursuant to the COMELEC Rules of Procedure<sup>[19]</sup> (COMELEC Rules); (b) the COMELEC Law Department is not a proper party to a petition for disqualification, and cannot initiate such case *motu proprio*; <sup>[20]</sup> and (c) the Regional Trial Court of Angeles City, Branch 58 (RTC of Angeles City) had permanently enjoined the implementation of the aforesaid OMB Consolidated Decision in a November 8, 2013 Resolution<sup>[21]</sup> in Civil Case No. 15325, grounded on the condonation doctrine.<sup>[22]</sup>

The COMELEC Law Department countered petitioner's averments, maintaining that it has the authority to file *motu proprio* cases, and reiterating its earlier arguments.<sup>[23]</sup>

On the other hand, the OMB submitted its Comment<sup>[24]</sup> on April 8, 2014, averring that the OMB rulings had attained finality as early as May 28, 2010 for failure of petitioner to timely appeal to the Court of Appeals (CA), rendering him disqualified from running for any elective position.<sup>[25]</sup>

### **The COMELEC Second Division Ruling**

In a Resolution<sup>[26]</sup> dated April 11, 2016, the COMELEC Second Division granted the petition, and cancelled petitioner's CoC, annulled his proclamation as the winner, and directed the Barangay Board of Canvassers to reconvene and proclaim the qualified candidate who garnered the highest number of votes as the duly-elected *Punong Barangay* of Brgy. Pulung Maragul.<sup>[27]</sup>

It treated the petition as one for cancellation of CoC pursuant to Section 78 of the OEC, notwithstanding that it was captioned as a "Petition for Disqualification" under Section 40 (b) of the LGC, holding that the nature of the petition is not determined by the caption given to it by the parties, but is based on the allegations it presented.<sup>[28]</sup> It ruled that petitioner committed material misrepresentation in solemnly avowing that he was eligible to run for the office he seeks to be elected to, when he was actually suffering from perpetual disqualification to hold public office by virtue of a final judgment dismissing him from service.<sup>[29]</sup>

The COMELEC Second Division likewise upheld its Law Department's authority to initiate *motu proprio* the Petition for Disqualification as being subsumed under the COMELEC's Constitutional mandate to enforce and administer laws relating to the conduct of elections.<sup>[30]</sup>

Finally, it rejected petitioner's invocation of the condonation doctrine as jurisprudentially established in *Aguinaldo v. Santos*<sup>[31]</sup> since the same had already

been abandoned in the 2015 case of *Carpio Morales v. Binay, Jr. (Carpio Morales)*.<sup>[32]</sup> It ruled that the doctrine cannot apply to petitioner, who was clearly established to be suffering from perpetual disqualification to hold public office, which rendered him ineligible, voided his CoC from the beginning, and barred his re-election.<sup>[33]</sup> Consequently, it declared petitioner to be not a candidate at all in the 2013 Barangay Elections; hence, the votes cast in his favor should not be counted.<sup>[34]</sup>

Petitioner moved for reconsideration,<sup>[35]</sup> maintaining that: (a) the petition should have been outrightly dismissed as the same is a combination of a disqualification case and a petition to deny due course to or cancel CoC, which is proscribed by the COMELEC Rules;<sup>[36]</sup> (b) he was not dismissed or removed from service since the CA had permanently enjoined the execution of the OMB Consolidated Decision in a December 17, 2009 Decision<sup>[37]</sup> in CA-G.R. SP No. 109986, which was affirmed by this Court in its Resolution<sup>[38]</sup> dated August 2, 2010 in G.R. No. 192325;<sup>[39]</sup> (c) the RTC of Angeles City, Branch 60 had already dismissed the criminal case against him that was anchored on the same basis as the administrative cases before the OMB, in a November 20, 2015 Order<sup>[40]</sup> in Criminal Case No. 09-5047;<sup>[41]</sup> and (d) petitioner's re-election as *Punong Barangay* of Brgy. Pulung Maragul in the 2013 Barangay Elections operated as a condonation of his alleged misconduct.<sup>[42]</sup>

### **The COMELEC *En Banc* Ruling**

In a Resolution<sup>[43]</sup> dated August 31, 2016, the COMELEC *En Banc* denied petitioner's motion for reconsideration and affirmed the ruling of its Second Division. It explained that petitioner's reliance on the aforesaid CA Decision and RTC Order was misplaced, observing that: (a) the evident intent of the CA Decision was only to enjoin the implementation of the OMB Consolidated Decision, while petitioner's motion for reconsideration was pending, and not thereafter;<sup>[44]</sup> and (b) absolution from a criminal charge is not a bar to an administrative prosecution and *vice versa*.<sup>[45]</sup>

Hence, this petition.

### **The Issues Before the Court**

The essential issue for the Court's resolution is whether or not the COMELEC gravely abused its discretion in cancelling petitioner's CoC.

### **The Court's Ruling**

The petition is without merit.

#### **I. Petitioner's perpetual disqualification to hold public office is a material fact involving eligibility.**

A CoC is a formal requirement for eligibility to public office.<sup>[46]</sup> Section 74 of the

OEC provides that the CoC of the person filing it shall state, among others, that he is eligible for the office he seeks to run, and that the facts stated therein are true to the best of his knowledge. To be "eligible" relates to the capacity of holding, as well as that of being elected to an office.<sup>[47]</sup> Conversely, "ineligibility" has been defined as a "disqualification or legal incapacity to be elected to an office or appointed to a particular position."<sup>[48]</sup> In this relation, **a person intending to run for public office must not only possess the required qualifications for the position for which he or she intends to run, but must also possess none of the grounds for disqualification under the law.**<sup>[49]</sup>

In this case, petitioner had been found guilty of Grave Misconduct by a final judgment, and punished with dismissal from service with all its accessory penalties, including perpetual disqualification from holding public office.<sup>[50]</sup> Verily, **perpetual disqualification to hold public office is a material fact involving eligibility**<sup>[51]</sup> which rendered petitioner's CoC void from the start since he was not eligible to run for any public office at the time he filed the same.

## **II. The COMELEC has the duty to *motu proprio* bar from running for public office those suffering from perpetual disqualification to hold public office.**

Under Section 2 (1), Article IX (C) of the 1987 Constitution, the COMELEC has the duty to "[e]nforce and administer all laws and regulations relative to the conduct of an election x x x." The Court had previously ruled that **the COMELEC has the legal duty to cancel the CoC of anyone suffering from the accessory penalty of perpetual disqualification to hold public office**, albeit, arising from a criminal conviction.<sup>[52]</sup> Considering, however, that Section 52 (a), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service similarly imposes the penalty of perpetual disqualification from holding public office as an accessory to the penalty of dismissal from service, the Court sees no reason why the ratiocination enunciated in such earlier criminal case should not apply here, *viz.*:

Even without a petition under either x x x Section 78 of the Omnibus Election Code, or under Section 40 of the Local Government Code, **the COMELEC is under a legal duty to cancel the certificate of candidacy of anyone suffering from the accessory penalty of perpetual special disqualification to run for public office by virtue of a final judgment** of conviction. The final judgment of conviction is notice to the COMELEC of the disqualification of the convict from running for public office. The law itself bars the convict from running for public office, and the disqualification is part of the final judgment of conviction. The final judgment of the court is addressed not only to the Executive branch, but also to other government agencies tasked to implement the final judgment under the law.

**Whether or not the COMELEC is expressly mentioned in the judgment to implement the disqualification, it is assumed that the portion of the final judgment on disqualification to run for elective public office is addressed to the COMELEC because under**

**the Constitution the COMELEC is duty bound to "[e]nforce and administer all laws and regulations relative to the conduct of an election."** The disqualification of a convict to run for public office under the Revised Penal Code, as affirmed by final judgment of a competent court, is part of the enforcement and administration of "all laws" relating to the conduct of elections.

To allow the COMELEC to wait for a person to file a petition to cancel the certificate of candidacy of one suffering from perpetual special disqualification will result in the anomaly that these cases so grotesquely exemplify. Despite a prior perpetual special disqualification, Jalosjos was elected and served twice as mayor. **The COMELEC will be grossly remiss in its constitutional duty to "enforce and administer all laws" relating to the conduct of elections if it does not motu proprio bar from running for public office those suffering from perpetual special disqualification by virtue of a final judgment.**<sup>[53]</sup>  
(Emphases and underscoring supplied)

In *Romeo G. Jalosjos v. COMELEC*<sup>[54]</sup> (*Jalosjos*), the Court had illumined that while the denial of due course to and/or cancellation of one's CoC generally necessitates the exercise of the COMELEC's quasi-judicial functions commenced through a petition based **on either Sections 12 or 78 of the OEC, or Section 40 of the LGC, when the grounds therefor are rendered conclusive on account of final and executory judgments, as in this case, such exercise falls within the COMELEC's administrative functions.**<sup>[55]</sup> To note, the choice as to which action to commence belongs to the petitioner:

What is indisputably clear is that the false material representation of Jalosjos is a ground for a petition under Section 78. However, since the false material representation arises from a crime penalized by *prisión mayor*, a petition under Section 12 of the Omnibus Election Code or Section 40 of the Local Government Code can also be properly filed. The petitioner has a choice whether to anchor his petition on Section 12 or Section 78 of the Omnibus Election Code, or on Section 40 of the Local Government Code. The law expressly provides multiple remedies and the choice of which remedy to adopt belongs to the petitioner.<sup>[56]</sup>

As petitioner's disqualification to run for public office pursuant to the final and executory OMB rulings dismissing him from service now stands beyond dispute, **it is incumbent upon the COMELEC to cancel petitioner's CoC as a matter of course,** else it be remiss in fulfilling its Constitutional duty to enforce and administer all laws and regulations relative to the conduct of an election.

Accordingly, the Court finds no merit to petitioner's claim<sup>[57]</sup> of denial of due process because even though the special circumstance extant herein calls for the outright cancellation of his CoC in the exercise of the COMELEC's administrative function, it even allowed him to submit his Verified Answer *cum* Memorandum to