

## EN BANC

[ G.R. No. 201809, October 11, 2016 ]

**H. SOHRIA PASAGI DIAMBRANG, PETITIONER, VS. COMMISSION ON ELECTIONS AND H. HAMIM SARIP PATAD, RESPONDENTS.**

### DECISION

**CARPIO, ACTING C.J.:** \*\*

#### The Case

Before the Court is a petition for certiorari<sup>[1]</sup> assailing the Resolution of the Commission on Elections (COMELEC) *En Banc* promulgated on 30 January 2012 in SPC No. 10-079 (BRGY).

#### The Antecedent Facts

Petitioner H. Sohria Pasagi Diambrang (Diambrang) and respondent H. Hamim Sarip Patad (Patad) were candidates for Punong Barangay of Barangay Kaludan, Nunungan, Lanao del Norte in the 25 October 2010 Barangay Elections. Patad obtained 183 votes while Diambrang obtained 78 votes. However, the Barangay Board of Canvassers (BBOC) proclaimed Diambrang as the duly elected Punong Barangay based on the assumption that Patad was disqualified for being a fugitive from justice. The BBOC's assumption was, in turn, based on the recommendation of the Provincial Election Supervisor that was not yet final and executory because the COMELEC had not issued any ruling on the matter.

Patad filed a petition to annul Diambrang's proclamation. The case was docketed as SPC No. 10-079 (BRGY). Neither Diambrang nor any of the members of the BBOC of Barangay Kaludan, Nunungan, Lanao del Norte filed their comment on the petition.

#### The Decision of the COMELEC Second Division

In its Resolution<sup>[2]</sup> promulgated on 11 August 2011, the COMELEC Second Division annulled Diambrang's proclamation. The COMELEC Second Division ruled that the BBOC of Barangay Kaludan, Nunungan, Lanao del Norte gravely abused its discretion amounting to lack of jurisdiction in proclaiming Diambrang as the duly elected Punong Barangay based solely on the recommendation of the Provincial Election Supervisor. The COMELEC Second Division ruled that the members of the BBOC should have been aware that the Provincial Election Supervisor, Joseph Hamilton M. Cuevas (Cuevas), merely conducted a preliminary investigation of the case and his recommendation was subject to review by the COMELEC. The COMELEC Second Division noted that the recommendation of Cuevas to disqualify Patad was overturned by the COMELEC First Division in its Resolution dated 14 January 2011 in SPA No. 10-144 (BRGY).

In addition, the COMELEC Second Division ruled that Diambrang, who only obtained the second highest number of votes in the elections, could not be declared as the winning candidate even if Patad was disqualified.

The dispositive portion of the Resolution reads:

WHEREFORE, premises considered, the petition is hereby GRANTED. The proclamation of private respondent H. Sohria Diambrang is ANNULLED. A writ of Preliminary Mandatory Injunction is issued commanding the BBOC of Barangay Kaludan, Nunungan, Lanao del Norte to convene anew and to PROCLAIM petitioner H. Hamim Sarip Patad as the winning Punong Barangay thereat. The Law Department is directed to file the necessary charge against the members of the BBOC for arrogating unto themselves the power to disqualify a candidate.

SO ORDERED.<sup>[3]</sup>

Diambrang filed a motion for reconsideration.

### **The Decision of the COMELEC *En Banc***

In its Resolution promulgated on 30 January 2012,<sup>[4]</sup> the COMELEC *En Banc* annulled the proclamation of Diambrang and ordered the first ranked Barangay Kagawad of Barangay Kaludan to succeed as the new Punong Barangay.

The COMELEC *En Banc* affirmed its 14 November 2011 Resolution overturning the COMELEC First Division's Resolution of 14 January 2011 in SPA No. 10-144 (BRGY). In its 14 November 2011 Resolution, the COMELEC *En Banc* granted the Petition to Disqualify and/or Deny Due Course to the Certificate of Candidacy of Patad on the ground that he is a fugitive from justice and thus disqualified from running for public office.

The COMELEC *En Banc* ruled that despite Patad's disqualification, Diambrang, who garnered the next highest number of votes, could not be proclaimed as the elected Punong Barangay. Having lost the elections, Diambrang is not entitled to be declared elected. Instead, the COMELEC *En Banc* ruled that the vacant position should be filled by the first ranked Kagawad pursuant to Section 44(b) of the Local Government Code.<sup>[5]</sup>

The dispositive portion of the COMELEC *En Banc's* Resolution reads:

WHEREFORE, premises considered, the Commission hereby RESOLVES to ANNUL the proclamation of H. Sohria P. Diambrang. In view of the permanent vacancy in the Office of the Punong Barangay, the proclaimed first ranked Barangay Kagawad of Barangay Kaludan, Nunungan, Lanao del Norte is hereby ORDERED to succeed as the new Punong Barangay pursuant to Section 44 of the Local Government Code.

SO ORDERED.<sup>[6]</sup>

Hence, Diambrang's recourse to this Court.

## **The Issue**

The only issue that we need to resolve here is whether Diambrang can be proclaimed as the elected Punong Barangay in view of Patad's disqualification.

## **The Ruling of this Court**

This case has been rendered moot by the election of a new Punong Barangay of Barangay Kaludan, Nunungan, Lanao del Norte during the 28 October 2013 Barangay Elections.<sup>[7]</sup> The case had been overtaken by events due to Patad's failure to file his comment on the petition as well as the repeated failure of the Postmaster of Lanao del Norte to respond to the Court's query whether Patad received the Resolution requiring him to file his comment. In a letter dated 18 January 2016, the Judicial Records Office<sup>[8]</sup> requested for the assistance of the Postmaster General and CEO of Manila to determine the date of delivery of the letter under Registry Receipt No. 9206 addressed to Patad.<sup>[9]</sup> The request was forwarded to the Office of Area VIII Director of Central Mindanao.<sup>[10]</sup> On 11 August 2016, Eduardo M. Juliata, Sr., LC/ACTG Postmaster of Philippine Postal Corporation, Central Mindanao Area VIII issued a certification that the registered letter was received in good order by SB Samsodin Guindo on 30 July 2012.<sup>[11]</sup> In a Resolution dated 30 August 2016, the Court resolved to dispense with the filing of Patad's comment on the petition.<sup>[12]</sup>

We reiterate the Court's prevailing rulings on the matter of disqualification of a candidate and its effect on the second-placer in an election.

The assailed Decision of the COMELEC *En Banc* was promulgated on 30 January 2012. The COMELEC *En Banc* ruled that Diambrang, as a second placer, could not be declared as the duly-elected winner despite Patad's disqualification.

On 9 October 2012, this Court promulgated its ruling in *Jalosjos, Jr. v. Commission on Elections*<sup>[13]</sup> where the Court held:

Decisions of this Court holding that the second-placer cannot be proclaimed winner if the first-placer is disqualified or declared ineligible should be limited to situations where the certificate of candidacy of the first-placer was valid at the time of filing but subsequently had to be cancelled because of a violation of law that took effect, or a legal impediment that took effect, after the filing of the certificate of candidacy. If the certificate of candidacy is void *ab initio*, then legally the person who filed such void certificate of candidacy was never a candidate in the elections at any time. All votes for such non-candidate are stray votes and should not be counted. Thus, such non-candidate can never be a first-placer in the elections. If a certificate of candidacy void *ab initio* is cancelled on the day, or before the day, of the election, prevailing jurisprudence holds that all votes for that candidate are stray votes. If a certificate of candidacy void *ab initio* is cancelled one day or more after the elections, all votes for such candidate should also be stray votes because the certificate of candidacy is void from the very beginning. This is the more equitable and logical approach on the effect of the cancellation of a certificate of candidacy that is void *ab initio*. Otherwise,