

## EN BANC

[ G.R. No. 207900, April 22, 2014 ]

### MAYOR GAMAL S. HAYUDINI, PETITIONER, VS. COMMISSION ON ELECTIONS AND MUSTAPHA J. OMAR, RESPONDENTS.

#### D E C I S I O N

##### PERALTA, J.:

For the Court's resolution is a Petition for *Certiorari* and Prohibition<sup>[1]</sup> under Rule 65, which petitioner Gamal S. Hayudini (*Hayudini*) filed to set aside and annul the assailed Resolutions of the Commission on Elections (COMELEC), dated June 20, 2013<sup>[2]</sup> and July 10, 2013,<sup>[3]</sup> which cancelled his Certificate of Candidacy for the mayoralty seat in the 2013 local elections in South Ubian, Tawi-Tawi, for having been issued with grave abuse of discretion amounting to lack or in excess of jurisdiction.

The antecedent facts are:

On October 5, 2012, Hayudini filed his Certificate of Candidacy<sup>[4]</sup> (CoC) for the position of Municipal Mayor of South Ubian, Tawi-Tawi in the May 13, 2013 National and Local Elections held in the Autonomous Region in Muslim Mindanao. Ten days after, or on October 15, 2012, Mustapha J. Omar (*Omar*) filed a Petition to Deny Due Course or Cancel Hayudini's CoC, entitled *Mustapha J. Omar v. Gamal S. Hayudini*, docketed as SPA No. 13-106(DC)(F).<sup>[5]</sup> Omar basically asserted that Hayudini should be disqualified for making false representation regarding his residence. He claimed that Hayudini declared in his CoC that he is a resident of the Municipality of South Ubian when, in fact, he resides in Zamboanga City.

Thereafter, on November 30, 2012, Hayudini filed a Petition for Inclusion in the Permanent List of Voters in *Barangay* Bintawlan, South Ubian before the Municipal Circuit Trial Court (MCTC). Despite the opposition of Ignacio Aguilar Baki, the MCTC granted Hayudini's petition on January 31, 2013.<sup>[6]</sup> On that same day, the COMELEC's First Division dismissed<sup>[7]</sup> Omar's earlier petition to cancel Hayudini's CoC in SPA No. 13-106(DC)(F) for lack of substantial evidence that Hayudini committed false representation as to his residency.

Oppositor Baki, subsequently, elevated the case to the Bongao Regional Trial Court (RTC), Branch 5. The RTC, on March 8, 2013, reversed<sup>[8]</sup> the MCTC ruling and ordered the deletion of Hayudini's name in *Barangay* Bintawlan's permanent list of voters. In view of said decision, Omar filed before the COMELEC a Petition to Cancel the Certificate of Candidacy of Gamal S. Hayudini by Virtue of a Supervening Event on March 26, 2013. The petition was docketed as SPA No. 13-249(DC)(F).<sup>[9]</sup> Hayudini appealed the March 8, 2013 RTC decision to the Court of Appeals (CA), but

on April 17, 2013, in CA-G.R. SP No. 05426,<sup>[10]</sup> the same was denied.

On May 13, 2013, Hayudini won the mayoralty race in South Ubian, Tawi-Tawi. He was proclaimed and, consequently, took his oath of office.

On June 20, 2013, the COMELEC Second Division issued a Resolution<sup>[11]</sup> granting Omar's second petition to cancel Hayudini's CoC. The dispositive portion of the COMELEC Resolution reads:

**WHEREFORE**, premises considered, the instant petition is hereby **GRANTED**. Accordingly, the Certificate of Candidacy filed by Gamal S. Hayudini as Mayor of South Ubian, Tawi-Tawi, in the 13 May 2013 elections, is hereby **CANCELLED**.

The Office of the Deputy Executive Director for Operations is hereby directed to constitute a Special Board of Canvassers for the purpose of proclaiming the lawful winner for mayoralty position in South Ubian, Tawi-Tawi during the 13 May 2013 elections.

SO ORDERED.<sup>[12]</sup>

Hayudini, thus, filed a Motion for Reconsideration with the COMELEC *En Banc*, arguing that its Second Division committed grave error when it gave due course to a belatedly filed petition and treated the March 8, 2013 RTC Decision as a supervening event.

On July 10, 2013, the COMELEC *En Banc* denied Hayudini's Motion for Reconsideration for lack of merit. The decretal portion of the *En Banc's* assailed Resolution states:

**WHEREFORE**, premises considered, the Commission RESOLVED, as it hereby **RESOLVES** to **DENY** this Motion for Reconsideration for **LACK OF MERIT**. Consequently, the June 20, 2013 Resolution of the Commission (Second Division) is hereby affirmed.

Corollary thereto, the proclamation of respondent *GAMAL S. HAYUDINI* is hereby declared null and void and without any legal force and effect. *SALMA A. OMAR* is hereby proclaimed as the duly-elected Mayor for South Ubian, Tawi-Tawi, being the qualified candidate obtaining the highest number of votes, considering the doctrine laid down by the case *Aratea v. Comelec*<sup>[13]</sup> that a cancelled CoC cannot give rise to a valid candidacy, and much less, to a valid vote, to wit:

"Ergo, since respondent Lonzanida was never a candidate for the position of mayor [of] San Antonio, Zambales, the votes cast for him should be considered stray votes. Consequently, Intervenor Antipolo, who remains as the sole candidate for the mayoralty post and obtained the highest number of votes, should now be proclaimed as the duly-elected Mayor of San

Antonio, Zambales.

Lonzanida's certificate of candidacy was cancelled, because he was ineligible or not qualified to run for Mayor. Whether his certificate of candidacy is cancelled before or after elections is immaterial because the cancellation on such ground means he was never a candidate from the very beginning, his certificate of candidacy being void ab initio. There was only one qualified candidate for Mayor in the May 2010 elections - Antipolo, who therefore received the highest number of votes."

The Office of the Deputy Executive Director for Operations is hereby directed to constitute a Special Board of Canvassers for the purpose of proclaiming **SALMA OMAR** as the winning candidate for mayoralty position in South Ubian, Tawi-Tawi during the May 13, 2013 elections.

SO ORDERED.<sup>[14]</sup>

Thus, Hayudini filed the instant petition for *certiorari* and prohibition.

Hayudini mainly advances the following arguments:

A.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT FAILED TO OUTRIGHTLY DISMISS THE INSTANT PETITION TO CANCEL CERTIFICATE OF CANDIDACY DUE TO SUPERVENING EVENT (SPA. NO. 13-249(DC)(F), DESPITE THE FAILURE OF RESPONDENT OMAR TO COMPLY WITH THE MANDATORY REQUIREMENTS OF SECTIONS 2 AND 4 OF THE COMELEC RESOLUTION NO. 9532.

x x x x

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT REVISITED AND MODIFIED THE FINAL AND EXECUTORY RESOLUTION ISSUED BY THE FIRST DIVISION IN THE SPA NO. 13-106(DC)(F).

III.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT RESOLVED TO CANCEL PETITIONER HAYUDINI'S CERTIFICATE OF CANDIDACY AND DECLARE HIS PROCLAMATION AS NULL AND VOID.

x x x x

L.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT DECREED THE PROCLAMATION OF SALMA A. OMAR AS THE DULY-ELECTED MAYOR FOR SOUTH UBIAN, TAWI-TAWI.<sup>[15]</sup>

The Court finds the petition to be without merit.

A special civil action for *certiorari* under Rule 65 is an independent action based on the specific grounds and available only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. It will only prosper if grave abuse of discretion is alleged and is actually proved to exist. Grave abuse of discretion has been defined as the arbitrary exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be condemned as having been done with grave abuse of discretion, such an abuse must be patent and gross.

<sup>[16]</sup> Here, Hayudini miserably failed to prove that the COMELEC rendered its assailed Resolutions with grave abuse of discretion.

Hayudini contends that the COMELEC committed grave abuse of discretion when it admitted, and later granted, Omar's petition despite failure to comply with Sections 2 and 4 of Rule 23 of the COMELEC Rules of Procedure, as amended by Resolution No. 9523. The subject sections read:

**Section 2. *Period to File Petition.*** — The Petition must be **filed within five (5) days from the last day for filing of certificate of candidacy; but not later than twenty five (25) days from the time of filing of the certificate of candidacy subject of the Petition.** In case of a substitute candidate, the Petition must be filed within five (5) days from the time the substitute candidate filed his certificate of candidacy.

x x x x

**Section 4. *Procedure to be observed.*** — Both parties shall observe the following procedure:

1. The petitioner shall, before filing of the Petition, furnish a copy of the Petition, through personal service to the respondent. In cases where personal service is not feasible, or the respondent refuses to receive the Petition, or the respondents' whereabouts cannot be ascertained, the petitioner shall execute an affidavit stating the reason or circumstances therefor and resort to registered mail as a mode of service. The proof of service or the affidavit shall be attached to the Petition to be filed;<sup>[17]</sup>

Here, Hayudini filed his CoC on October 5, 2012, which was also the last day of filing of CoC for the May 13, 2013 elections. Omar, on the other hand, filed the subject

petition only on March 26, 2013. Under the COMELEC Rules, a Petition to Deny Due Course or Cancel CoC must be filed within five days from the last day for filing a certificate of candidacy, but not later than twenty-five days from the time of filing of the CoC subject of the petition. Clearly, Omar's petition was filed way beyond the prescribed period. Likewise, he failed to provide sufficient explanation as to why his petition was not served personally to Hayudini.

Notwithstanding the aforementioned procedural missteps, the Court sustains the COMELEC's liberal treatment of Omar's petition.

As a general rule, statutes providing for election contests are to be liberally construed in order that the will of the people in the choice of public officers may not be defeated by mere technical objections. Moreover, it is neither fair nor just to keep in office, for an indefinite period, one whose right to it is uncertain and under suspicion. It is imperative that his claim be immediately cleared, not only for the benefit of the winner but for the sake of public interest, which can only be achieved by brushing aside technicalities of procedure that protract and delay the trial of an ordinary action. This principle was reiterated in the cases of *Tolentino v. Commission on Elections*<sup>[18]</sup> and *De Castro v. Commission on Elections*,<sup>[19]</sup> where the Court held that "in exercising its powers and jurisdiction, as defined by its mandate to protect the integrity of elections, the COMELEC must not be straitjacketed by procedural rules in resolving election disputes."<sup>[20]</sup>

Settled is the rule that the COMELEC Rules of Procedure are subject to liberal construction. The COMELEC has the power to liberally interpret or even suspend its rules of procedure in the interest of justice, including obtaining a speedy disposition of all matters pending before it. This liberality is for the purpose of promoting the effective and efficient implementation of its objectives - ensuring the holding of free, orderly, honest, peaceful, and credible elections, as well as achieving just, expeditious, and inexpensive determination and disposition of every action and proceeding brought before the COMELEC. Unlike an ordinary civil action, an election contest is imbued with public interest. It involves not only the adjudication of private and pecuniary interests of rival candidates, but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate. And the tribunal has the corresponding duty to ascertain, by all means within its command, whom the people truly chose as their rightful leader.<sup>[21]</sup>

Indeed, Omar had previously filed a Petition to Deny Due Course or Cancel Hayudini's CoC on October 15, 2012, docketed as SPA No. 13-106(DC)(F). This was dismissed on January 31, 2013, or the same day the MCTC granted Hayudini's petition to be included in the list of voters. However, on March 8, 2013, the RTC reversed the MCTC ruling and, consequently, ordered the deletion of Hayudini's name in Barangay Bintawlan's permanent list of voters. Said deletion was already final and executory under the law.<sup>[22]</sup> Hayudini, however, still appealed the case to the CA, which was subsequently denied. Notably, thereafter, he went to the CA again, this time to file a petition for *certiorari*, docketed as CA-G.R. SP No. 05499.<sup>[23]</sup> In a Resolution dated July 9, 2013, the CA also denied said petition primarily because of Hayudini's act of engaging in the pernicious practice of forum shopping by filing two modes of appeal before said court.<sup>[24]</sup> Hence, by virtue of the finality of said RTC decision deleting his name from the voters' list, Hayudini, who had been