

EN BANC

[G.R. No. 199612, January 22, 2013]

**RENATOM. FEDERICO, PETITIONER, VS. COMMISSION ON
ELECTIONS, COMELEC EXECUTIVE DIRECTOR AND OSMUNDO M.
MALIGAYA, RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a petition for certiorari under Rule 65, in relation to Rule 64, of the Rules of Court, assailing the December 21, 2011 Resolution^[1] of the Commission on Elections (Comelec) *En Banc*, in SPC No. 10-082, entitled *In Re: Petition to Annul the Proclamation of Respondent Renata M Federico, Osmundo M. Maligaya v. Renato M. Federico and the Municipal Board of Canvassers of Santo Tomas, Batangas*.

The Facts

Edna Sanchez (*Edna*) and private respondent Osmundo M. Maligaya (*Maligaya*) were candidates for the position of municipal mayor of Sto. Tomas, Batangas, in the May 10, 2010 Automated National and Local Elections. Maligaya was the Liberal Party's official mayoralty candidate.^[2]

On April 27, 2010, Armando Sanchez, husband of Edna and the gubernatorial candidate for the province of Batangas, died. Two days later, or on April 29, 2010,^[3] Edna withdrew her Certificate of Candidacy (COC) for the position of mayor. She then filed a new COC and the corresponding Certificate of Nomination and Acceptance (*CONA*) for the position of governor as substitute candidate for her deceased husband.

On May 5, 2010, petitioner Renato M. Federico (Federico) filed with the Office of the Election Officer of Sto. Tomas, Batangas, his COC^[4] and CONA^[5] as official candidate of the Nationalista Party and as substitute candidate for mayor, in view of the withdrawal of Edna.

On May 7, 2010, the Comelec Law Department referred the Affidavit of Withdrawal, the COC and the CONA of Edna, as substitute candidate for her late husband, and those of Federico, as substitute candidate for her, to the Comelec *En Banc* for its consideration.^[6]

On the same day, May 7, 2010, Maligaya filed his Petition to Deny Due Course and to Cancel Certificate of Candidacy^[7] of Federico before the Comelec, docketed as SPA No. 10-137 (DC). Maligaya sought to have Federico declared ineligible to run as substitute candidate for Edna because the period to file the COC for substitute candidates had already lapsed after December 14, 2009, pursuant to Section 13 of

Comelec Resolution No. 8678.^[8]

In Resolution No. 8889,^[9] dated May 8, 2010, the COMELEC En Banc gave due course to the COC of Edna as substitute gubernatorial candidate in the Batangas province and to that of Federico as substitute mayoralty candidate in Sto. Tomas.

By that time, however, the official ballots had already been printed. Expectedly, on May 10, 2010, the day of elections, the name "SANCHEZ, Edna P." was retained in the list of candidates for Mayor of Sto. Tomas, and garnered the highest number of votes - 28,389 against Maligaya's 22,577 votes.^[10]

On May 11, 2010, the Municipal Board of Canvassers (MBOC) printed the Certificate of Canvass of Votes and Proclamation of Winning Candidates^[11] (COCVP) showing "SANCHEZ Edna P." as the winning mayoralty candidate. The printed COCVP, reads:

WE, THE UNDERSIGNED MEMBERS of the CITY/MUNICIPAL BOARD OF CANVASSERS do hereby certify under oath that we have duly canvassed the votes cast in 81 precincts in the city/municipality for the Candidates therein for city/municipality offices in the elections held on May 10, 2010. Attached hereto and forming part hereof is a Statement of Votes by Precinct (CEF No. 20-A-1) obtained by each candidate for the offices of Mayor and Vice-Mayor.

That after such canvass, it appears that **SANCHEZ, Edna P. obtained 28389 votes** for the office of City/Municipality Mayor, the same being the highest number of votes legally cast for said office; and SILVA, Armenius O. obtained 25532 votes for the office of City/Municipality Vice Mayor, the same being the highest number of votes legally cast for said office.

ON THE BASIS OF THE FOREGOING, we hereby proclaim the above candidates as the duly elected City/Municipality Mayor and City/Municipality Vice Mayor.

IN WITNESS WHEREOF, we have signed these presents in SANTO TOMAS, Province of Batangas **this Tue May 11, 14:09:55 PHT 2010.**

[Emphases and underscoring supplied]

This action of MBOC prompted Maligaya to file his Petition to Annul Proclamation of Respondent Edna Sanchez,^[12] docketed as SPC No. 10-022, on May 20, 2010. This petition was, however, later withdrawn, as agreed upon by the parties, and the case was dismissed by the Comelec First Division.^[13]

A second print-out^[14] of the COCVP was issued by the MBOC bearing the *same time and date with the same number of votes* garnered by Edna being credited to Federico. The second print-out reads:

WE, THE UNDERSIGNED MEMBERS of the CITY/MUNICIPAL BOARD OF CANVASSERS do hereby certify under oath that we have duly canvassed the votes cast in 81 precincts in the city/municipality for the Candidates therein for city/municipality offices in the elections held on May 10, 2010. Attached hereto and forming part hereof is a Statement of Votes by Precinct (CEF No. 20-A-1) obtained by each candidate for the offices of Mayor and Vice-Mayor.

That after such canvass, it appears that **FEDERICO, Renato M. obtained 28389 votes** for the office of City/Municipality Mayor, the same being the highest number of votes legally cast for said office; and SILVA, Armenius O. obtained 25532 votes for the office of City/Municipality Vice Mayor, the same being the highest number of votes legally cast for said office.

ON THE BASIS OF THE FOREGOING, we hereby proclaim the above candidates as the duly elected City/Municipality Mayor and City/Municipality Vice Mayor.

IN WITNESS WHEREOF, we have signed these presents in SANTO TOMAS, Province of Batangas this **Tue May 11, 14:09:55 PHT 2010.**

[Emphases and underscoring supplied]

On June 1, 2010, upon learning of the proclamation of Federico as the winning mayoralty candidate by the MBOC, Maligaya filed his Petition to Annul Proclamation of Respondent Renato M. Federico^[15] as mayor of Sto. Tomas, Batangas, docketed as SPC No. 10-082. The petition was predicated on the alleged illegal act of the MBOC in issuing a falsified and patently antedated second COCVP in the name of Federico without reconvening, without due notice, and without annulling the first COCVP issued in favor of Edna.

In his answer to the petition, Federico raised, among others, the defenses that the petition was an erroneous remedy, having no basis under the rules; that it was not based on valid grounds; and that it should not have been given due course as it was belatedly filed.^[16]

The members of the MBOC likewise filed an answer, claiming good faith when they proclaimed Federico as winner considering that the substitutions of Edna and Federico were valid under Comelec Resolution No. 8889.^[17]

Meanwhile, Maligaya's petition to deny due course and to cancel the COC of Federico was denied by the Comelec Second Division in its Resolution,^[18] dated October 19, 2010. It gave due course to Federico's COC and CONA on the basis of the Comelec En Banc's Resolution No. 8889 which upheld Federico's substitution.

In its Resolution,^[19] dated June 21, 2011, the Comelec First Division denied Maligaya's petition to annul the proclamation of Federico for having been filed out of time, as it was filed beyond the ten (10) day period from the day of proclamation as provided for under Section 6, Rule 4 of Comelec Resolution 8804.^[20] Further, it held

that Federico's filing of candidacy for mayor, vice Edna, was valid.

Maligaya then filed his Verified Partial Motion for Reconsideration,^[21] dated June 27, 2011, insisting that his petition had not yet prescribed and that Federico's substitution was null and void with his COC and CONA filed after December 14, 2009, the deadline provided for under Section 13 of Comelec Resolution No. 8678. He further claimed that the generation of a second print-out of the COCVP bearing the same time and date with the same number of votes garnered by Edna being credited to Federico was questionable for it was impossible for Federico to be proclaimed as the winning candidate because the Canvassing and Consolidating System (CCS) had already printed a COCVP with the name of Edna, as the winner.

The said partial motion for reconsideration was elevated to the Comelec *En Banc* for proper disposition.

In his Comment^[22] on Maligaya's partial motion for reconsideration, Federico pointed out that his substitution of Edna had already been upheld with finality and, thus, could no longer be questioned. He prayed for the dismissal of the case.

In the hearing of August 25, 2011, the Comelec *En Banc* considered the case submitted for resolution.

On August 31, 2011, Federico filed a motion for reconsideration^[23] of the Comelec *En Banc*'s Order given in the August 25, 2011 hearing, claiming that the case was barred by forum shopping and *litis pendentia*. Pending his motion, he elevated the matter to the Supreme Court on September 9, 2011 by way of a Petition for Certiorari and Prohibition, docketed as G.R. No. 198283. This petition was subsequently dismissed by the Court on October 4, 2011 for being premature in view of the pendency of the partial motion for reconsideration before the Comelec *En Banc*.^[24]

On December 21, 2011, the Comelec *En Banc* issued the assailed Resolution granting Maligaya's partial motion for reconsideration. Thus:

WHEREFORE, in view of the foregoing, the instant Partial Motion for Reconsideration is **GRANTED**. The proclamation of respondent Federico is hereby ANNULLED. Accordingly:

1. The Executive Director is ordered to constitute a Special Municipal Board of Canvassers for the municipality of Sto. Tomas, Batangas;
2. The Special Municipal Board of Canvassers is ordered to immediately notify the parties, reconvene and proclaim petitioner OSMUNDO M. MALIGAYA as the duly elected Mayor of Sto. Tomas, Batangas; and
3. The Law Department is directed to conduct an investigation on the members of the (Old) Municipal Board of Canvassers of Sto. Tomas, Batangas for possible violation of Section 32 pars. (c) and (f) Article VI of COMELEC Resolution No. 8809.

Let the Executive Director implement this resolution.

SO ORDERED.^[25]

The Comelec *En Banc* ruled that the petition for the annulment of Federico's proclamation filed on June 1, 2011 was within the prescribed ten (10) day period. It explained that the period for the filing of the said petition should be reckoned from May 27, 2011, when Maligaya discovered the existence of the second COCVP and not on May 11, 2011, the proclamation date. The Comelec *En Banc* was of the view that the annulment of Federico's proclamation was in order because of his invalid substitution of Edna, as his substitute COC was filed beyond the deadline and due to the illegality of the proceedings of the MBOC in generating the second COCVP without authority from the Comelec and without notice to the parties, in violation of Comelec Resolution No. 8804.

Hence, Federico filed the present Petition for Certiorari with Prayer for Writ of Preliminary Injunction and/or Temporary Restraining Order, dated December 23, 2011, before this Court anchored on the following

GROUND

(I)

The validity of Petitioner's substitution as mayoralty candidate is already a settled fact.

A. Petitioner validly substituted Edna Sanchez pursuant to Section 77 of the Omnibus Election Code.

B. The validity of Petitioner's substitution was already decided with finality by the Comelec.

C. Resolution No. 8889 is valid. The Comelec, in issuing Resolution No. 8889, passed upon all matters and issues laid before it in the case. Moreover, after Resolution No. 8889 was issued, it was in force and had to be complied with.

(II)

The proclamation of Petitioner was regular and done in accordance with law.

A. The votes cast for "SANCHEZ, Edna P." were legally considered votes for Petitioner.

B. The petition to annul Petitioner's proclamation was filed out of time.