

EN BANC

[G.R. No. 192221, November 13, 2012]

CASIMIRA S. DELA CRUZ, PETITIONER, VS. COMMISSION ON ELECTIONS AND JOHN LLOYD M. PACETE, RESPONDENTS.

D E C I S I O N

VILLARAMA, JR., J.:

With the adoption of automated election system in our country, one of the emerging concerns is the application of the law on nuisance candidates under a new voting system wherein voters indicate their choice of candidates by shading the oval corresponding to the name of their chosen candidate printed on the ballots, instead of writing the candidate's name on the appropriate space provided in the ballots as in previous manual elections. If the name of a nuisance candidate whose certificate of candidacy had been cancelled by the Commission on Elections (COMELEC) was still included or printed in the official ballots on election day, should the votes cast for such nuisance candidate be considered stray or counted in favor of the *bona fide* candidate?

The Case

In this petition for certiorari with prayer for injunctive relief/s under Rule 65 in conjunction with Section 2, Rule 64 of the 1997 Rules of Civil Procedure, as amended, filed on May 31, 2010, Casimira S. Dela Cruz (petitioner) assails COMELEC Resolution No. 8844^[1] considering as stray the votes cast in favor of certain candidates who were either disqualified or whose COCs had been cancelled/denied due course but whose names still appeared in the official ballots or certified lists of candidates for the May 10, 2010 elections.

Petitioner prays for the following reliefs:

1. Upon the filing of the instant Petition, a Temporary Restraining Order and/or Writ of Preliminary Injunction be issued enjoining the taking of oath and assumption into office of Private Respondent John Lloyd Pacete as Vice-Mayor of the Municipality of Bugasong;
2. After the Petition is submitted for resolution, a decision be rendered granting the instant Petition and:
 - (a) declaring as null and void the portion of COMELEC Resolution No. 8844 considering as stray the votes cast in favor of the disqualified nuisance candidate Aurelio N. Dela Cruz;

(b) ordering that the votes cast in favor of Aurelio N. Dela Cruz be counted and tallied in favor of Petitioner Casimira S. Dela Cruz pursuant to COMELEC Resolution No. 4116; and

(c) requiring the Regional Trial Court of the Province of Antique where the Petitioner's Election Protest is pending to proclaim as Vice-Mayor of the Municipality of Bugasong the candidate who obtained the highest number of votes after the votes in favor of nuisance candidate Aurelio N. Dela Cruz is counted and tallied to the votes garnered by Petitioner Casimira S. Dela Cruz.

3. Permanently enjoining the taking of oath and assumption into office of Private Respondent if Petitioner is proclaimed as the Vice-Mayor of the Municipality of Bugasong, Province of Antique.

Other just and equitable reliefs are likewise prayed for.^[2]

Factual Antecedents

In the 2001, 2004 and 2007 elections, petitioner ran for and was elected member of the *Sangguniang Bayan* (SB) of Bugasong, Antique. On November 28, 2009, petitioner filed her certificate of candidacy^[3] for the position of Vice-Mayor of the Municipality of Bugasong, Province of Antique under the ticket of the National People's Coalition (NPC). Subsequently, Aurelio N. Dela Cruz (Aurelio) also filed a certificate of candidacy^[4] for the same position.

On December 6, 2009, petitioner filed a petition^[5] to declare Aurelio a nuisance candidate on the ground that he filed his certificate of candidacy for the vice-mayoralty position to put the election process in mockery and to cause confusion among voters due to the similarity of his surname with petitioner's surname. Petitioner emphasized that she is considered a very strong candidate for the said position having been elected as member of the SB for three consecutive terms under the ticket of the NPC and obtained the fifth (2001), fourth (2004) and third (2007) highest number of votes. In contrast, Aurelio is an unknown in the political scene with no prior political experience as an elective official and no political party membership. Being a retiree and having no known business, Aurelio has no sufficient source of income but since the 2007 elections petitioner's opponents have been prodding him to run for the same position as petitioner in order to sow confusion and thwart the will of the voters of Bugasong. Petitioner further cited Aurelio's miserable showing in the previous local elections when he ran and garnered only 126 and 6 votes for the positions of SB member (May 2007) and barangay captain of Barangay Maray, Bugasong (November 2007), respectively. Citing *Bautista v. COMELEC*,^[6] petitioner asserted that these circumstances clearly demonstrate Aurelio's lack of a bona fide intention and capability to run for the position of Vice-Mayor, thus preventing a faithful determination of the true will of the electorate.

On January 29, 2010, the COMELEC First Division issued a Resolution^[7] declaring Aurelio as a nuisance candidate and cancelling his certificate of candidacy for the

vice-mayoralty position in Bugasong.

Despite the declaration of Aurelio as a nuisance candidate, however, his name was not deleted in the Certified List of Candidates^[8] and Official Sample Ballot^[9] issued by the COMELEC. The names of the candidates for Vice-Mayor, including Aurelio and respondent John Lloyd M. Pacete, appeared on the Official Sample Ballot as follows:

VICE-MAYOR Vote for not more than 1		
O 1.DELA CRUZ, Aurelio N. "REL" (IND.)	O 2. DELA CRUZ, Casimira S. "MIRAY" (NPC)	O 3. PACETE, John Lloyd M. "BINGBING" (NP)

Consequently, petitioner filed on March 23, 2010, an Urgent Ex-Parte Omnibus Motion^[10] praying, among other things, that COMELEC issue an order directing the deletion of Aurelio's name from the Official List of Candidates for the position of Vice-Mayor, the Official Ballots, and other election paraphernalia to be used in Bugasong for the May 2010 elections. She also prayed that in the event Aurelio's name can no longer be deleted in time for the May 10, 2010 elections, the COMELEC issue an order directing that all votes cast in favor of Aurelio be credited in her favor, in accordance with COMELEC Resolution No. 4116 dated May 7, 2001.

On May 1, 2010, the COMELEC En Banc issued Resolution No. 8844^[11] listing the names of disqualified candidates, including Aurelio, and disposing as follows:

NOW THEREFORE, the Commission RESOLVED, as it hereby RESOLVES, as follows:

1. to delete the names of the foregoing candidates from the certified list of candidates; and
2. to **consider stray the votes of said candidates, if voted upon.**
^[12] (Emphasis supplied)

On May 10, 2010, the first automated national and local elections proceeded as scheduled. Aurelio's name remained in the official ballots.

During the canvassing of the votes by the Municipal Board of Canvassers (MBOC) of Bugasong on May 13, 2010, petitioner insisted that the votes cast in favor of Aurelio be counted in her favor. However, the MBOC refused, citing Resolution No. 8844. The Statement of Votes by Precinct for Vice-Mayor of Antique-Bugasong^[13] showed the following results of the voting:

	TOTAL	RANK
DELA CRUZ, AURELIO N.	532	3
DELA CRUZ, CASIMIRA S.	6389	2
PACETE, JOHN LLOYD M.	6428	1

Consequently, on May 13, 2010, private respondent John Lloyd M. Pacete was

proclaimed Vice-Mayor of Bugasong by the MBOC of Bugasong.^[14]

On May 21, 2010, petitioner filed with the Regional Trial Court of the Province of Antique an election protest praying for (1) the tallying in her favor of the 532 votes cast for Aurelio; (2) the annulment of respondent Pacete's proclamation as Vice-Mayor of Bugasong; and (3) her proclamation as winning candidate for the position of Vice-Mayor of Bugasong.

Petitioner's Arguments

Considering that private respondent won by a margin of only thirty-nine (39) votes over petitioner's 6,389 votes, petitioner contends that she would have clearly won the elections for Vice-Mayor of Bugasong had the MBOC properly tallied or added the votes cast for Aurelio to her votes. Thus, petitioner insists she would have garnered a total of 6,921 votes as against the 6,428 votes of private respondent. By issuing a directive to consider the votes cast for Aurelio as stray votes instead of counting the same in favor of petitioner in accordance with COMELEC Resolution No. 4116, the COMELEC's First Division gravely abused its discretion.

Petitioner argues that Resolution No. 8844 violates her constitutional right to equal protection of the laws because there is no substantial difference between the previous manual elections and the automated elections conducted in 2010 to justify non-observance of Resolution No. 4116 issued in 2001, particularly on the matter of votes cast for a candidate who was declared a nuisance candidate in a final judgment where such nuisance candidate has the same name with that of the *bona fide* candidate. Moreover, in contrast to the assailed resolution, COMELEC Resolution No. 4116 properly recognized the substantial distinctions between and among (a) disqualified candidates, (b) nuisance candidates whose names are similar to those of the *bona fide* candidates, (c) nuisance candidates who do not have similar names with those of the *bona fide* candidates, and (d) candidates who had voluntarily withdrawn their certificates of candidacy. As a result of the failure of the COMELEC's First Division to make these important distinctions when it issued Resolution No. 8844 that applies to disqualified candidates, nuisance candidates and all other candidates whose certificates of candidacy had been cancelled or denied course, petitioner's right to due process was clearly violated, and only made possible the very evil that is sought to be corrected by the former rule not to consider the votes cast for the nuisance candidate as stray but count them in favor of the *bona fide* candidate.

Respondents' Arguments

COMELEC maintains that there is a presumption of validity with respect to its exercise of supervisory or regulatory authority in the conduct of elections. Also, the time-honored rule is that a statute is presumed to be constitutional and that the party assailing it must discharge the burden of clearly and convincingly proving its invalidity. Thus, to strike down a law as unconstitutional, there must be a clear and unequivocal showing that what the law prohibits, the statute permits. In this case, petitioner miserably failed to prove a clear breach of the Constitution; she merely invokes a violation of the equal protection clause and due process of law without any basis.

On the claim of equal protection violation, COMELEC contends that there is a

substantial distinction between a manual election where Resolution No. 4116 applies, and an automated election governed by Resolution No. 8844. While the votes for the nuisance candidate were not considered stray but counted in favor of the *bona fide* candidate, this is no longer the rule for automated elections. COMELEC cites the following factors which changed the previous rule: (1) the official ballots in automated elections now contain the full names of the official candidates so that when a voter shaded an oval, it was presumed that he carefully read the name adjacent to it and voted for that candidate, regardless of whether said candidate was later declared disqualified or nuisance; (2) since the names of the candidates are clearly printed on the ballots, unlike in manual elections when these were only listed in a separate sheet of paper attached to the ballot secrecy folder, the voter's intention is clearly to vote for the candidate corresponding to the shaded oval; (3) the rules on appreciation of ballots under Section 211, Article XVIII of the Omnibus Election Code apply only to elections where the names of candidates are handwritten in the ballots; and (4) with the use of the automated election system where the counting of votes is delegated to the Precinct Count Optical Scan (PCOS) machines, pre-proclamation controversies, including complaints regarding the appreciation of ballots and allegations of misreading the names of the candidates written, were flaws which the automation rectified. Aside from being germane to the purpose of our election laws, Resolution No. 8844 is not limited to existing conditions as it is applicable to all persons of the same class even in succeeding elections, and covered all disqualified and nuisance candidates without distinction.

Lastly, COMELEC asserts there is no violation of the right to due process. For public office is not a property right and no one has a vested right to any public office.

On his part, private respondent Pacete asserts that petitioner cannot validly claim the votes cast for Aurelio in view of the rule provided in Section 211 (24) of Batas Pambansa Blg. 881, which cannot be supplanted by Resolution No. 4116. He also cites an annotation on election law,^[15] invoking this Court's ruling in *Kare v. COMELEC*^[16] that the aforesaid provision when read together with Section 72, are understood to mean that "any vote cast in favor of a candidate, whose disqualification has already been declared final regardless of the ground therefor, shall be considered stray."

Private respondent also points out the fact that on May 4, 2010, COMELEC caused the publication of Resolution No. 8844 in two newspapers of general circulation in the country. There was thus an earnest effort on the part of COMELEC to disseminate the information, especially to the voters in Bugasong, Antique, that the name of Aurelio was printed on the official ballots as one of the candidates for Vice-Mayor. Said voters were amply forewarned about the status of Aurelio's candidacy and the consequences that will obtain should he still be voted for. Additionally, the petitioner and Aurelio bear different first names, female and male, respectively; petitioner and her political party engaged in a massive voter education during the campaign period, emphasizing to her supporters that she was given the corresponding number ("2") in the official ballots, and the voters should be very circumspect in filling up their ballots because in case of error in filling up the same, they will not be given replacement ballots. As to the Judicial Affidavits of those who voted for petitioner attesting to the fact of mistakenly shading the oval beside the name of Aurelio in the ballots, which was attached to the petition, petitioner in effect