

## EN BANC

[ G.R. No. 192280, January 25, 2011 ]

### **SERGIO G. AMORA, JR., PETITIONER, VS. COMMISSION ON ELECTIONS AND ARNIELO S. OLANDRIA, RESPONDENTS.**

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

##### **NACHURA, J.:**

Before us is a petition for *certiorari* under Rule 64, in relation to Rule 65, of the Rules of Court, seeking to annul and set aside the Resolutions dated April 29, 2010<sup>[1]</sup> and May 17, 2010,<sup>[2]</sup> respectively, of the Commission on Elections (COMELEC) in SPA No. 10-046 (DC).

First, the undisputed facts.

On December 1, 2009, petitioner Sergio G. Amora, Jr. (Amora) filed his Certificate of Candidacy (COC) for Mayor of Candijay, Bohol. At that time, Amora was the incumbent Mayor of Candijay and had been twice elected to the post, in the years 2004 and 2007.

To oppose Amora, the Nationalist People's Coalition (NPC) fielded Trygve L. Olaivar (Olaivar) for the mayoralty post. Respondent Arnielo S. Olandria (Olandria) was one of the candidates for councilor of the NPC in the same municipality.

On March 5, 2010, Olandria filed before the COMELEC a Petition for Disqualification against Amora. Olandria alleged that Amora's COC was not properly sworn contrary to the requirements of the Omnibus Election Code (OEC) and the 2004 Rules on Notarial Practice. Olandria pointed out that, in executing his COC, Amora merely presented his Community Tax Certificate (CTC) to the notary public, Atty. Oriculo Granada (Atty. Granada), instead of presenting competent evidence of his identity. Consequently, Amora's COC had no force and effect and should be considered as not filed.

Amora traversed Olandria's allegations in his Answer cum Position Paper.<sup>[3]</sup> He countered that:

1. The Petition for Disqualification is actually a Petition to Deny Due Course or cancel a certificate of candidacy. Effectively, the petition of Olandria is filed out of time;
2. Olandria's claim does not constitute a proper ground for the cancellation of the COC;
3. The COC is valid and effective because he (Amora) is personally known to the notary public, Atty. Granada, before whom he took his oath in filing the document;

4. Atty. Granada is, in fact, a close acquaintance since they have been members of the League of Municipal Mayors, Bohol Chapter, for several years; and

5. Ultimately, he (Amora) sufficiently complied with the requirement that the COC be under oath.

As previously adverted to, the Second Division of the COMELEC granted the petition and disqualified Amora from running for Mayor of Candijay, Bohol.

Posthaste, Amora filed a Motion for Reconsideration<sup>[4]</sup> before the COMELEC *en banc*. Amora reiterated his previous arguments and emphasized the asseverations of the notary public, Atty. Granada, in the latter's affidavit,<sup>[5]</sup> to wit:

1. The COMELEC's (Second Division's) ruling is contrary to the objectives and basic principles of election laws which uphold the primacy of the popular will;

2. Atty. Granada states that while he normally requires the affiant to show competent evidence of identity, in Amora's case, however, he accepted Amora's CTC since he personally knows him;

3. Apart from the fact that Amora and Atty. Granada were both members of the League of Municipal Mayors, Bohol Chapter, the two consider each other as distant relatives because Amora's mother is a Granada;

4. It is a matter of judicial notice that practically everybody knows the Mayor, most especially lawyers and notaries public, who keep themselves abreast of developments in local politics and have frequent dealings with the local government; and

5. In all, the COC filed by Amora does not lack the required formality of an oath, and thus, there is no reason to nullify his COC.

Meanwhile, on May 10, 2010, national and local elections were held. Amora obtained 8,688 votes, equivalent to 58.94% of the total votes cast, compared to Olaivar's 6,053 votes, equivalent to only 41.06% thereof. Subsequently, the Municipal Board of Canvassers of Candijay, Bohol, proclaimed Amora as the winner for the position of Municipal Mayor of Candijay, Bohol.<sup>[6]</sup>

A week thereafter, or on May 17, 2010, in another turn of events, the COMELEC *en banc* denied Amora's motion for reconsideration and affirmed the resolution of the COMELEC (Second Division). Notably, three (3) of the seven (7) commissioners dissented from the majority ruling. Commissioner Gregorio Larrazabal (Commissioner Larrazabal) wrote a dissenting opinion, which was concurred in by then Chairman Jose A.R. Melo and Commissioner Rene V. Sarmiento.

In denying Amora's motion for reconsideration and upholding Olandria's petition for disqualification of Amora, the COMELEC ratiocinated, thus:

[Amora] himself admitted in his Motion that the *Second Division* was correct in pointing out that the CTC is no longer a competent evidence of

identity for purposes of notarization.

The COC therefore is rendered invalid when [petitioner] only presented his CTC to the notary public. His defense that he is personally known to the notary cannot be given recognition because the best proof [of] his contention could have been the COC itself. However, careful examination of the jurat portion of the COC reveals no assertion by the notary public that he personally knew the affiant, [petitioner] herein. Belated production of an Affidavit by the Notary Public cannot be given weight because such evidence could and should have been produced at the earliest possible opportunity.

The rules are absolute. Section 73 of the Election Code states:

*"Section 73. Certificate of Candidacy.* - No person shall be eligible for any elective public office unless he files a **sworn certificate of candidacy** within the period fixed herein."

Under the 2004 Rules on Notarial Practice of 2004 (Rules), the requirements of notarization of an oath are:

*"Section 2. Affirmation or Oath.* - The term 'Affirmation' or 'Oath' refers to an act in which an individual on a single occasion:

(a) appears in person before the notary public;

(b) is **personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules**; and

(c) avows under penalty of law to the whole truth of the contents of the instrument or document."

The required form of identification is prescribed in [S]ection 12 of the same Rules, to wit:

*"Section 12. Competent Evidence of Identity.* - The phrase 'competent evidence of identity' refers to the identification of an individual based on:

(a) at least one current identification document issued by an official agency **bearing the photograph** and signature of the individual. x x x."

It is apparent that a CTC, which bears no photograph, is no longer a valid form of identification for purposes of Notarization of Legal Documents. No less than the Supreme Court itself, when it revoked the Notarial Commission of a member of the Bar in *Baylon v. Almo*, reiterated this

when it said:

"As a matter of fact, recognizing the established unreliability of a community tax certificate in proving the identity of a person who wishes to have his document notarized, we did not include it in the list of competent evidence of identity that notaries public should use in ascertaining the identity of persons appearing before them to have their documents notarized."

Seeking other remedies, [Amora] maintained that Section 78 of the Election Code governs the Petition. Said section provides that:

"Sec. 78. Petition to deny due course to or cancel a certificate of candidacy. - **A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false.** The petition may be filed **at any time not later than twenty-five days from the time of the filing of the certificate of candidacy** and shall be decided, after due notice and hearing, not later than fifteen days before the election."

[Amora] however failed to note that the Petition relies upon an entirely different ground. The Petition has clearly stated that it was invoking Section 73 of the Election Code, which prescribes the mandatory requirement of filing a sworn certificate of candidacy. As properly pointed out by [Olandria], he filed a Petition to Disqualify for Possessing Some Grounds for Disqualification, which, is governed by COMELEC Resolution No. 8696, to wit:

"B. **PETITION TO DISQUALIFY A CANDIDATE** PURSUANT TO SECTION 68 OF THE OMNIBUS ELECTION CODE AND PETITION TO DISQUALIFY FOR LACK OF QUALIFICATIONS OR **POSSESSING SOME GROUNDS FOR DISQUALIFICATION**

1. A verified petition to disqualify a candidate pursuant to Section 68 of the OEC and the **verified petition to disqualify a candidate for lack of qualifications or possessing some grounds for disqualification may be filed on any day after the last day for filing of certificates of candidacy but not later than the date of proclamation;**

x x x x

3. **The petition to disqualify a candidate for** lack of qualification or **possessing some grounds for disqualification**, shall be filed in ten (10) legible copies, personally or through a duly authorized representative, by any person of voting age, or duly registered political party, organization or coalition of political parties on the ground that the candidate does not possess all the qualifications as provided for by the Constitution or by existing law or who possesses some grounds for disqualification as provided for by the Constitution or by existing law."

x x x x

Finally, we do not agree with [Amora] when he stated that the *Second Division's* Resolution "practically supplanted congress by adding another ground for disqualification, not provided in the omnibus election code or the local government code. The constitution is very clear that it is congress that shall prescribe the qualifications (and disqualifications) of candidates for local government positions." These grounds for disqualification were laid down in both laws mentioned by [Amora] and COMELEC Resolution 8696.<sup>[7]</sup>

Hence, this petition for *certiorari* imputing grave abuse of discretion to the COMELEC. On June 15, 2010, we issued a *Status Quo Ante* Order and directed respondents to comment on the petition. As directed, Olandria and the COMELEC filed their respective Comments<sup>[8]</sup> which uniformly opposed the petition. Thereafter, Amora filed his Reply.<sup>[9]</sup>

Amora insists that the Petition for Disqualification filed by Olandria is actually a Petition to Deny Due Course since the purported ground for disqualification simply refers to the defective notarization of the COC. Amora is adamant that Section 73 of the OEC pertains to the substantive qualifications of a candidate or the lack thereof as grounds for disqualification, specifically, the qualifications and disqualifications of elective local officials under the Local Government Code (LGC) and the OEC. Thus, Olandria's petition was filed way beyond the reglementary period of twenty-five (25) days from the date of the filing of the disputed COC.

Moreover, Amora maintains that his COC is properly notarized and not defective, and the presentation of his CTC to the notary public to whom he was personally known sufficiently complied with the requirement that the COC be under oath. Amora further alleges that: (1) Olaivar, his opponent in the mayoralty post, and likewise a member of the NPC, is purportedly a fraternity brother and close associate of Nicodemo T. Ferrer (Commissioner Ferrer), one of the commissioners of the COMELEC who disqualified him; and (2) Olaivar served as Consultant for the COMELEC, assigned to the Office of Commissioner Ferrer.

Olandria and the COMELEC reiterated the arguments contained in the COMELEC *en banc* resolution of May 17, 2010.