

## EN BANC

[ G.R. No. 180051, December 24, 2008 ]

### **NARDO M. VELASCO, PETITIONER, VS. COMMISSION ON ELECTIONS AND MOZART P. PANLAQUI, RESPONDENTS.**

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

##### **BRION, J.:**

This petition for *certiorari* - filed by Nardo M. Velasco (*Velasco*) under Rule 64, in relation with Rule 65, of the Revised Rules of Court - seeks to set aside and annul [1] the Resolution dated July 6, 2007 of the Second Division of the Commission on Elections (*COMELEC*) and [2] the Resolution dated October 15, 2007 of the *COMELEC en banc*, in SPA Case No. 07-148 entitled *Mozart P. Panlaqui v. Nardo M. Velasco*. The assailed resolutions denied due course to the Certificate of Candidacy (*COC*) Velasco had filed for the position of Mayor of the Municipality of Sasmuan, Pampanga.

#### **THE ANTECEDENTS**

Velasco was born in San Antonio, Sasmuan, Pampanga on June 22, 1952 to Arsenio Velasco and Lucia Mangalindan. He married Evelyn D. Castillo on June 29, 1975 at the Roman Catholic Church of Sasmuan. In 1983, he moved to and worked in the United States of America where he subsequently became a citizen.

Sometime in 2006, Velasco applied for dual citizenship under Republic Act No. 9225, otherwise known as the Citizenship Retention and Re-Acquisition Act of 2003. His application was approved on July 31, 2006. On the same day, he took his oath of allegiance to the Republic of the Philippines before the Philippine Consulate General in San Francisco. He returned to the Philippines on September 14, 2006 and has not left since, except for a 3-day Hongkong trip from September 26, 2006 to September 29, 2009.

Soon thereafter or on October 13, 2006, Velasco applied for registration as a voter of Sasmuan, Pampanga. The Election Registration Board (*ERB*) denied his application. Thereupon, Velasco filed a petition for the inclusion of his name in the list of voters with the Municipal Trial Court of Sasmuan (*MTC*). The *MTC*, *finding no evidence of Velasco's change of domicile*, granted Velasco's petition on February 9, 2007; it reversed the *ERB*'s decision and ordered Velasco's inclusion in the List of Voters of Sasmuan.

On March 1, 2007, Branch 52 of the Regional Trial Court of Guagua, Pampanga (*RTC*) reversed and set aside, on appeal, the *MTC* decision. The *RTC* reasoned out that Velasco lost his domicile of origin [Sasmuan, Pampanga] when he became a US citizen; under Philippine immigration laws, he could only stay in the Philippines as a visitor or as a resident alien. Velasco, according to the *RTC*, only regained or

reacquired his Philippine residency on July 31, 2006 when he reacquired his Filipino citizenship. The RTC based this conclusion on our ruling in *Caasi v. Court of Appeals*<sup>[1]</sup> that naturalization in a foreign country results in the abandonment of domicile in the Philippines. Thus, the RTC found that Velasco failed to comply with the residency requirement under the Constitution, making him ineligible to vote in the May 14, 2007 elections.

Velasco appealed the RTC decision to the Court of Appeals (CA) *via* a petition for review under Rule 42 of the Rules of Court; the appeal was docketed as CA-G.R. SP No. 98259.

**It was against this factual backdrop that Velasco filed on March 28, 2007 his COC for the position of Mayor of Sasmuan.** Velasco's COC contains, among others, the required information that he is a registered voter of Precinct No. 103-A of Sasmuan, Pampanga. He executed on even date an Affidavit renouncing, abandoning, and relinquishing his American citizenship.

The next day, private respondent Mozart Panlaqui (*Panlaqui*), who also filed his COC for the position of Mayor of Sasmuan, filed a Petition to Deny Due Course To and/or To Cancel Velasco's COC, claiming that: (1) contrary to Velasco's claim, he is not a registered voter of Precinct No. 103-A, as his name is not included in the list of voters; (2) the RTC has rendered a decision denying Velasco's petition for inclusion as voter; (3) Velasco does not possess the constitutional requirement of legal residency (*i.e.*, one year residency in the Philippines immediately preceding the election as provided under Section 1, Article V of the Constitution) to register as voter; he arrived in the Philippines only last September 14, 2006; and (4) Velasco is not eligible to run for office since he is not a qualified voter. Panlaqui asked for the annulment, revocation and cancellation of, or denial of due course to, Velasco's COC that allegedly contained obvious and gross material misrepresentation. The case was docketed as SPA Case No. 07-148.

In his Answer, Velasco denied the allegations of Panlaqui's petition and claimed in defense that: (1) he possesses all the qualifications of a voter of Sasmuan, as he is a domiciliary and permanent resident of the Philippines and Sasmuan since birth; that, when he took his oath of allegiance on July 31, 2006, he is considered not to have lost his Philippine citizenship and therefore continues to enjoy full civic and political rights under the Constitution and the statutes; (2) the appeal or review of the RTC decision is pending resolution with the Court of Appeals; (3) he did not act with malice, bad faith and gross misrepresentation when he stated that he is a registered voter of Precinct No. 103-A of Sasmuan in his COC, as the MTC decision has not been reversed with finality; (4) he has renounced his American citizenship on March 29, 2007 or prior to the filing of his COC, making him eligible to seek elective public office pursuant to Republic Act No. 9255; and (5) he possesses all the qualifications of a voter of Sasmuan and of a candidate for Municipal Mayor, Sasmuan being his domicile of origin and permanent residence. He claimed that he is qualified to vote and seek public office until a final judgment is rendered saying otherwise; hence, he did not commit any misrepresentation and Panlaqui's petition should be dismissed.

Velasco garnered 7,822 votes [the most number] for the position of Mayor of Sasmuan in the May 14, 2007 election. As the COMELEC failed to resolve Panlaqui's petition prior to the election, Velasco was proclaimed Mayor of Sasmuan on May 16,

2007. He took his oath of office and assumed the powers and functions of the office on June 30, 2007.

On July 6, 2007, the Second Division of the COMELEC issued a Resolution - the first of the interrelated resolutions assailed in the present petition - canceling Velasco's COC and declaring his proclamation as Mayor of Sasmuan null and void. Citing Section 138 of the Omnibus Election Code (OEC)<sup>[2]</sup> which declared the decision of the RTC in the voters inclusion/exclusion proceedings final and executory, the Second Division of the COMELEC found Velasco guilty of material misrepresentation when he claimed in his COC filed on March 28, 2007 that he is a registered voter of Sasmuan, Pampanga. This defect, according to the Second Division, effectively voided Velasco's COC.

Velasco moved to reconsider the Second Division's Resolution, but the COMELEC *en banc* in a Resolution dated October 15, 2007 (also assailed in this petition) denied the motion. The COMELEC *en banc* essentially affirmed the Second Division's ruling. Additionally, the COMELEC pointed out that in the absence of a writ or order issued by the CA (where the appeal from the RTC decision in the inclusion/exclusion case was then pending) enjoining the enforcement of the RTC decision, it had to apply Section 138 of the OEC. Velasco responded to this development by filing the present petition with this Court.

## **THE PETITION, COMMENTS AND RELATED DEVELOPMENTS**

The petition is based on the following grounds/arguments:

- 1. Respondent Comelec committed grave abuse of discretion when it decided the issue on petitioner's right to vote despite its apparent lack of jurisdiction on this issue and the pendency of such prejudicial issue before the CA.**
- 2. Respondent Comelec committed grave abuse of discretion when it ruled that the March 1, 2008 decision of the RTC of Guagua, Pampanga reversing the earlier decision of the MTC of Sasmuan, Pampanga is already final and executory.**
- 3. Respondent COMELEC committed grave abuse of discretion when it annulled the proclamation of the petitioner without notice and hearing.**
- 4. Respondent Comelec committed grave abuse of discretion when it ruled that petitioner committed material misrepresentation in his COC by merely relying on private respondent's baseless allegations in the petition to deny due course to petitioner's COC without taking into consideration that petitioner possesses all the qualifications and none of the disqualification of a voter.**

In his comment, Panlaqui asserts that: (1) Velasco committed forum shopping, as another case involving the same issues is on appeal and pending resolution with the CA; and (2) in light of this appeal, not all the requisites for a petition for *certiorari* are present; in the alternative and assuming *certiorari* to be proper, the COMELEC

did not commit grave abuse of discretion, as the RTC decision is final, executory, and non-appealable.

The Office of the Solicitor General (*OSG*) filed a Comment in behalf of the COMELEC. The *OSG* argues that the COMELEC did not commit grave abuse of discretion. The COMELEC has jurisdiction - under Section 78 of *Batas Pambansa Blg. 881*, as amended, or the *OEC* - over petitions to deny due course and/or cancel a *COC* (*COC-denial/cancellation*). There was likewise no denial of due process; Velasco filed an Answer to Panlaqui's petition and was fully heard before the COMELEC denied due course to his *COC*. The *OSG* also argues that Velasco's immigration to the United States and subsequent acquisition of US citizenship constituted an abandonment of his Philippine domicile and residence. Finally, the *OSG* claims that Velasco committed misrepresentation in declaring his residence at Sasmuan in his *COC* - a ground for the cancellation of *COC* under Section 78 of the *OEC*. The real issue, according to the *OSG*, is not Velasco's right to vote, but the misrepresentation he committed when he filed his *COC*.

On March 5, 2008, the COMELEC issued a writ of execution to implement the assailed resolutions. The CA, on the other hand, rendered on March 13, 2008 its decision in CA-GR SP No. 98259 granting Velasco's appeal, thereby reversing and setting aside the RTC decision. The appellate court ruled that, contrary to the RTC's finding, Velasco effectively reacquired his residence when he decided to relocate in the Philippines for good in 2003; from 2003-2006, Velasco stayed in the Philippines for a total of almost two (2) years for the last three (3) years immediately preceding the May 14, 2007 election; from the totality of these acts, Velasco revealed his intention to reacquire his rights as a Filipino citizen. Citing *Macalintal v. Commission on Elections*,<sup>[3]</sup> the CA considered Velasco a qualified voter.

On Velasco's motion, we issued a *status quo ante* order enjoining the COMELEC from implementing the assailed resolutions.

In an interesting twist, the CA issued on August 19, 2008 an Amended Decision - in response to a motion for reconsideration of its earlier decision - dismissing Velasco's Rule 42 petition for lack of jurisdiction. It reversed its earlier ruling that it has jurisdiction to entertain the appeal, explicitly stating that the jurisprudence it cited to support its appellate jurisdiction in voters' inclusion/exclusion proceeding is no longer good law because of the amendments to the election law on which its cited jurisprudence was based. It declared that "*Section 138 of the OEC being explicit that the decision on appeal by the RTC in inclusion and exclusion cases is immediately final and executory appears to be a clear mandate for this Court (the CA) not to entertain instant petition for lack of jurisdiction.*"

Based on these submissions, we are called upon to resolve the following issues: (1) whether Velasco forum-shopped; and (2) whether the COMELEC gravely abused its discretion in canceling Velasco's *COC*.

### **THE COURT'S RULING**

**We find the petition devoid of merit.**

**Grave Abuse of Discretion.**

The well-settled rule is that this Court will not interfere with a COMELEC decision unless the COMELEC is shown to have committed grave abuse of discretion.<sup>[4]</sup> Correctly understood, grave abuse of discretion is such "capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or [an] exercise of power in an arbitrary and despotic manner by reason of passion or personal hostility, or an exercise of judgment so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act in a manner not at all in contemplation of law."<sup>[5]</sup>

Velasco imputes grave abuse of discretion on the COMELEC for canceling his COC on the sole ground that he committed false representation when he claimed that he is a registered voter of Precinct No. 103-A. This imputation directly poses to us the question: **was the COMELEC ruling capriciously, whimsically, and arbitrarily made?**

In answering this question, we recognize at the outset that together with the cancellation of the COC that is directly before us, we have to consider the effect and impact of the inclusion/exclusion proceedings that Velasco brought before the MTC which, on appeal to the RTC, ultimately led to the denial of his listing as a voter in Sasmuan. While this inclusion/exclusion case is not before us, it was the ruling in this proceeding that the COMELEC cited as ground for the cancellation of Velasco's COC after Velasco claimed that he is a registered voter of Precinct No. 103-A of Sasmuan, Pampanga.

### **The COC Denial/Cancellation Proceedings.**

Section 74, in relation with Section 78 of the OEC governs the cancellation of, and grant or denial of due course to, COCs. The combined application of these sections requires that the facts stated in the COC by the would-be candidate be true, as any false representation of a material fact is a ground for the COC's cancellation or the withholding of due course. To quote these provisions:

SEC. 74. ***Contents of certificate of candidacy.*** -- The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation assumed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and **that the facts stated in the certificate of candidacy are true to the best of his knowledge.**

x x x x

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