

EN BANC

[G.R. No. 150605, December 10, 2002]

EUFROCINO M. CODILLA, SR., PETITIONER, VS. HON. JOSE DE VENECIA, ROBERTO P. NAZARENO, IN THEIR OFFICIAL CAPACITIES AS SPEAKER AND SECRETARY-GENERAL OF THE HOUSE OF REPRESENTATIVES, RESPECTIVELY, AND MA. VICTORIA L. LOCSIN, RESPONDENTS.

DECISION

PUNO, J.:

In a democracy, the first self-evident principle is that he who has been rejected by the people cannot represent the people. Respondent Ma. Victoria L. Locsin lost to petitioner Eufrocino M. Codilla, Sr. by 17,903 votes in the May 14, 2001 elections as Representative of the 4th legislative district of Leyte. The most sophisticated legal alchemy cannot justify her insistence that she should continue governing the people of Leyte against their will. The enforcement of the sovereign will of the people is not subject to the discretion of any official of the land.

This is a Petition for Mandamus and Quo Warranto directed against respondents Speaker Jose De Venecia and Secretary-General Roberto P. Nazareno of the House of Representatives to compel them to implement the decision of the Commission on Elections en banc by (a) administering the oath of office to petitioner as the duly-elected Representative of the 4th legislative district of Leyte, and (b) registering the name of the petitioner in the Roll of Members of the House of Representatives, and against respondent Ma. Victoria L. Locsin for usurping, intruding into, and unlawfully holding and exercising the said public office on the basis of a void proclamation.

The facts are uncontroverted. Petitioner and respondent Locsin were candidates for the position of Representative of the 4th legislative district of Leyte during the May 14, 2001 elections. At that time, petitioner was the Mayor of Ormoc City while respondent Locsin was the sitting Representative of the 4th legislative district of Leyte. On May 8, 2001, one Josephine de la Cruz, a registered voter of Kananga, Leyte, filed directly with the COMELEC main office a Petition for Disqualification^[1] against the petitioner for indirectly soliciting votes from the registered voters of Kananga and Matag-ob, Leyte, in violation of Section 68 (a) of the Omnibus Election Code. It was alleged that the petitioner used the equipments and vehicles owned by the City Government of Ormoc to extract, haul and distribute gravel and sand to the residents of Kananga and Matag-ob, Leyte, for the purpose of inducing, influencing or corrupting them to vote for him. Attached to the petition are the (a) Affidavits of Basilio Bates,^[2] Danilo D. Maglasang,^[3] Cesar A. Laurente;^[4] (b) Joint Affidavit of Agripino C. Alferez and Rogelio T. Salvera;^[5] (c) Extract Records from the Police Blotter executed by Police Superintendent Elson G. Pecho;^[6] and (d) Photographs showing government dump trucks, haulers and surfacers and portions of public roads allegedly filled-in and surfaced through the intercession of the respondent.^[7]

The case was docketed as **SPA No. 01-208** and assigned to the COMELEC's Second Division.

On May 10, 2001, the COMELEC Second Division issued an Order **delegating the hearing and reception** of evidence on the disqualification case to the Office of the Regional Director of Region VIII.^[8] On May 11, 2001, the COMELEC Second Division sent a telegram informing the petitioner that a disqualification case was filed against him and that the petition was remanded to the Regional Election Director for investigation.^[9]

At the time of the elections on May 14, 2001, the Regional Election Director had yet to hear the disqualification case. Consequently, petitioner was included in the list of candidates for district representative and was voted for. The initial results showed that petitioner was the winning candidate.

On May 16, 2001, before the counting could be finished, respondent **Locsin joined as intervenor** in SPA No. 128 and filed a **"Most Urgent Motion to Suspend Proclamation of Respondent [herein petitioner]"** with the COMELEC Second Division.^[10] Respondent Locsin alleged that "the evidence on record against respondent is very strong and unless rebutted remains." She urged the Commission to set the hearing of the disqualification case and prayed for the suspension of the proclamation of the respondent "so as not to render the present disqualification case moot and academic." **A copy of the Motion was allegedly served on petitioner by registered mail but no registry receipt was attached thereto.**^[11]

On May 18, 2001, respondent Locsin filed a **"Second Most Urgent Motion to Suspend Proclamation of Respondent"** stating "there is clear and convincing evidence showing that the respondent is undoubtedly guilty of the charges against him and this remains unrebutted by the respondent." A copy of the Motion was sent to the petitioner and the corresponding registry receipt was attached to the pleading.^[12] The records, however, do not show the date the petitioner received the motion.

On the same day, May 18, 2001, the COMELEC Second Division issued an Ex-Parte Order^[13] directing the Provincial Board of Canvassers of Leyte to **suspend the proclamation of petitioner** in case he obtains the highest number of votes by reason of **"the seriousness of the allegations in the petition for disqualification."**^[14] It also directed the Regional Election Director to speed up the reception of evidence and to forward immediately the complete records together with its recommendation to the Office of the Clerk of the Commission.^[15] As a result, **petitioner was not proclaimed as winner even though the final election results showed that he garnered 71,350 votes as against respondent Locsin's 53,447 votes.**^[16]

At the time that the COMELEC Second Division issued its Order suspending his proclamation, the petitioner has yet to be summoned to answer the petition for disqualification. Neither has said petition been set for hearing. It was only on May 24, 2001 that petitioner was able to file an Answer to the petition for his disqualification with the Regional Election Director, alleging that: (a) he has not received the summons together with the copy of the petition; (b) he became aware of the matter only by virtue of the telegram sent by the COMELEC Second Division informing him that a petition was filed against him and that the Regional Election

Director was directed to investigate and receive evidence therewith; and (c) he obtained a copy of the petition from the COMELEC Regional Office No. 8 at his own instance.^[17] Petitioner further alleged that the maintenance, repair and rehabilitation of barangay roads in the municipalities of Matag-ob and Kananga were undertaken without his authority, participation or directive as City Mayor of Ormoc. He attached in his Answer the following: (a) Affidavit of Alex B. Borinaga;^[18] (b) Copy of the Excerpt from the Minutes of the Regular Session of Barangay Monterico;^[19] (c) Affidavit of Wilfredo A. Fiel;^[20] (d) Supplemental Affidavit of Wilfredo A. Fiel;^[21] and (e) Affidavit of Arnel Y. Padayao.^[22]

On May 25, 2001, petitioner filed a **Motion to Lift Order of Suspension**,^[23] alleging that (a) he did not receive a copy of the Motion to Suspend his Proclamation and hence, was denied the right to rebut and refute the allegations in the Motion; (b) that he did not receive a copy of the summons on the petition for disqualification and after personally obtaining a copy of the petition, filed the requisite answer only on May 24, 2001; and (c) that he received the telegraph Order of the COMELEC Second Division suspending his proclamation only on May 22, 2001. He attached documentary evidence in support of his Motion to Lift the Suspension of his proclamation, and requested the setting of a hearing on his Motion.^[24]

On May 30, 2001, an oral argument was conducted on the petitioner's Motion and the parties were ordered to submit their respective memoranda.^[25] On June 4, 2001, petitioner submitted his Memorandum^[26] in support of his Motion assailing the suspension of his proclamation on the grounds that: (a) he was not afforded due process; (b) the order has no legal and factual basis; and (c) evidence of his guilt is patently inexistent for the purpose of suspending his proclamation. He prayed that his proclamation as winning congressional candidate be expediently made, even while the disqualification case against him continue upon due notice and hearing. He attached the following additional evidence in his Memorandum: (a) Copy of certification issued by PNP Senior Inspector Benjamin T. Gorre;^[27] (b) Certification issued by Elena S. Aviles, City Budget Officer;^[28] (c) Copy of certification issued by Wilfredo A. Fiel, City Engineer of Ormoc;^[29] (d) Joint Affidavit of Antonio Patenio and Pepito Restituto;^[30] and (e) Affidavits of Demetrio Brion,^[31] Igmedio Rita^[32] and Gerardo Monteza.^[33] Respondent Locsin's memorandum also contained additional affidavits of his witnesses.^[34]

Petitioner's Motion to Lift the Order of Suspension, however, was not resolved. Instead, on June 14, 2001, the **COMELEC Second Division promulgated its Resolution**^[35] **in SPA No. 01-208** which found the petitioner guilty of indirect solicitation of votes and ordered his **disqualification**. It directed the **"immediate proclamation of the candidate who garnered the highest number of votes xxx."** A copy of said Resolution **was sent by fax** to the counsel of petitioner in Cebu City in the afternoon of the following day.^[36]

By virtue of the said Resolution, **the votes cast for petitioner, totaling 71,350, were declared stray even before said Resolution could gain finality.** On June 15, 2001, respondent Locsin was proclaimed as the duly elected Representative of the 4th legislative district of Leyte by the Provincial Board of Canvassers of Leyte. It issued a Certificate of Canvass of Votes and Proclamation of the Winning Candidates for Member of the House of Representatives stating that "MA. VICTORIA

LARRAZABAL LOCSIN obtained a total of FIFTY THREE THOUSAND FOUR HUNDRED FORTY SEVEN (53,447) votes representing the **highest number of votes** legally cast in the legislative district for said office.”^[37] **Respondent Locsin took her oath of office on June 18, 2001 and assumed office on June 30, 2001.**

On June 20, 2001, **petitioner seasonably filed with the COMELEC *en banc* a Motion for Reconsideration**^[38] from the June 14, 2001 Resolution of the COMELEC Second Division which ordered his disqualification, as well as an Addendum to the Motion for Reconsideration.^[39] Petitioner alleged in his Motion for Reconsideration that the COMELEC Second Division erred: (1) in disqualifying petitioner on the basis solely of the dubious declaration of the witnesses for respondent Locsin; (2) in adopting *in toto* the allegations of the witnesses for respondent Locsin; and (3) in promulgating the resolution in violation of its own rules of procedure and in directing therein the immediate proclamation of the second highest ‘vote getter.’ Respondent Locsin and her co-petitioner in SPA No. 01-208 filed a joint Opposition to the Motion for Reconsideration.^[40]

On June 21, 2001, petitioner filed with the COMELEC *en banc* a **Petition for Declaration of Nullity of Proclamation**,^[41] docketed as SPC No. 01-324, assailing the validity of the proclamation of respondent Locsin who garnered only the **second highest number of votes**. Respondent Locsin filed her Answer alleging that: (1) the Commission lost jurisdiction to hear and decide the case because of the proclamation of Locsin and that any question on the “election, returns, and qualification” of Locsin can only be taken cognizance of by the House of Representatives Electoral Tribunal (HRET); (2) the case should be filed and heard in the first instance by a Division of the Commission and not directly by the Commission *en banc*; and (3) the proclamation of Locsin was valid because she received the highest number of valid votes cast, the votes of Codilla being stray.

On June 28, 2001, petitioner filed an **Urgent Manifestation**^[42] stating that he was deprived of a fair hearing on the disqualification case because **while the documentary evidence adduced in his Memorandum was in support of his Motion for the lifting of the suspension of his proclamation, the COMELEC Second Division instead ruled on the main disqualification case**. In consonance with his prayer that a full-dress hearing be conducted on the disqualification case, he submitted Affidavits of additional witnesses^[43] which he claims would refute and substantially belie the allegations of petitioner’s/intervenor’s witnesses. A Reply,^[44] Rejoinder^[45] and Sur-Rejoinder^[46] were respectively filed by the parties. Consequently, the motion for reconsideration in SPA No. 01-208 and the petition for declaration of nullity in SPC No. 01-324 were submitted for resolution.

From the records, it appears that initially, a “Resolution” penned by Commissioner Rufino S.B. Javier, dated July 24, 2001, was submitted to the Office of the Chairman, dismissing the petition for declaration of nullity for lack of jurisdiction and denying the motion for reconsideration filed by petitioner Codilla.^[47] Commissioners Florentino A. Tuason, Jr. and Resurreccion Z. Borra submitted their respective dissenting opinions^[48] to the Javier resolution. It bears emphasis that Commissioner Tuason, Jr. was the *ponente* of the Resolution of the COMELEC Second Division which ordered the disqualification of petitioner but after considering the additional evidence presented by the latter, he concluded that the totality of the

evidence was clearly in petitioner's favor. Equally worth mentioning is the fact that Commissioner Ralph C. Lantion, who was the Presiding Commissioner of the Second Division, also dissented and voted to grant Codilla's motion for reconsideration on the ground that "[T]he people of Leyte have spoken and I respect the electorate's will. x x x." [49]

On August 29, 2001, then COMELEC Chairman Alfredo L. Benipayo issued a "Vote and Opinion and Summary of Votes" **reversing the resolution of the Second Division and declaring the proclamation of respondent Locsin as null and void**. The dispositive portion reads:

"JUDGMENT

WHEREFORE, in view of all the foregoing considerations, I concur with Commissioner Resurreccion Z. Borra, Commissioner Florentino A. Tuason, Jr. and Commissioner Ralph C. Lantion, in SPA No. 01-208, to GRANT the motion for reconsideration and to REVERSE the resolution of the Commission (*Second Division*) promulgated on June 1, 2001, disqualifying Codilla; and subsequently, in SPC No. 01-324, to GRANT the petition of Eufrocino M. Codilla, Sr., and declare as null and void the proclamation of losing candidate Locsin.

Accordingly:

1. On the Motion for Reconsideration of the disqualification resolution against Codilla, promulgated by the Commission (*Second Division*) on June 14, 2001 (SPA No. 01-208), I vote:

(a) to GRANT the Motion for Reconsideration of respondent-movant Eufrocino M. Codilla, Sr., and to REVERSE the Resolution of the Commission (*Second Division*) promulgated on June 14, 2001, for insufficiency of evidence;

(b) to lift the order of suspension of proclamation of petitioner Codilla, issued by the Commission (*Second Division*) on May 18, 2001, having been issued without hearing and without any finding that the evidence of guilt of petitioner Codilla is strong and, thus, null and void;

(c) to nullify the order contained in the Resolution of the Commission (*Second Division*) promulgated on June 14, 2001, for "(t)he immediate proclamation of the candidate who garnered the highest number of votes, to the exclusion of respondent" and the concurrent order for "the Provincial Board of Canvasser (sic) of Leyte to immediately reconvene and thereafter proclaim forthwith the candidate who obtained the highest number of votes counting out the Respondent" the same being violative of election laws, established jurisprudence, and resolutions of the Commission;

(d) to nullify the ruling contained in the Resolution of the Commission (*Second Division*) promulgated on June 14, 2001, that the votes of respondent Codilla are "considered stray and