

EN BANC

[G.R. No. 134293, June 21, 1999]

KAISER B. RECABO, JR., PETITIONER, VS. THE COMMISSION ON ELECTIONS AND FRANCISCO R. REYES, JR., RESPONDENTS.

D E C I S I O N

GONZAGA_REYES, J.:

This is a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure seeking to annul the resolution dated May 8, 1998 of the First Division of the Commission on Elections^[1] ("the Commission"), canceling the certificate of candidacy of petitioner Kaiser B. Recabo, Jr., and the resolution dated July 1, 1998 of the Commission en banc, denying petitioner's motion for reconsideration.

The antecedents as found by the Commission in the resolution dated May 8, 1998 are:

"It appears that on March 27, 1998, petitioner Francisco R. Reyes, Jr. filed his certificate of candidacy (Annex A, Petition) as the official candidate (for vice-mayor of the municipality of Mainit, Surigao del Norte) of the political party LAKAS NUCD-UMDP. His nomination by said political party is evidenced by the certificate of nomination and acceptance dated March 27, 1998 signed by Fidel V. Ramos and Jose de Venecia, National Chairman and Secretary General, respectively, of said political party. This certificate of nomination and acceptance is petitioner's Annex A-1.

However, on April 2, 1998, another person, respondent Kaiser B. Recabo, Jr., claiming to be the official candidate of LAKAS NUCD-UMDP as vice-mayor of the municipality of Mainit, Surigao del Norte also filed his certificate of candidacy (Annex E, Petition). Petitioner submitted to this Commission a copy of the certificate of nomination and acceptance in favor of Kaiser B. Recabo, Jr. dated March 30, 1998 (Annex F) signed only by one representative of LAKAS NUCD-UMDP, Francisco T. Matugas. The space of the other representative (Robert Z. Barbers) is blank.

Petitioner in par. II-2 of the petition alleges:

II-2. The respondent KAISER B. RECABO, JR., is a SUBSTITUTE candidate for the office of VICE-MAYOR of the Municipality of Mainit, Surigao del Norte. He filed his Certificate of Candidacy on April 02, 1998. He claims to be a substitute of MRS. CANDELARIA B. RECABO who filed her Certificate of Candidacy for the position of VICE-MAYOR of Mainit, Surigao del Norte on March 25, 1998.

The allegations in this paragraph are admitted by respondent as he has not specifically denied the same. Further, respondent emphasizes that he admits this in par. 1 of his Answer where he states:

1. Except those that may be specifically denied in the following paragraphs of this answer, he admits the material allegations of the petition.

Petitioner submits the theory that since the certificate of nomination and acceptance (Annex C) in favor of Candelaria B. Recabo is not signed by Robert Barbers, there is no valid nomination by LAKAS NUCD-UMDP in favor of Candelaria Recabo. Therefore, Candelaria B. Recabo not having been validly nominated, should be deemed an independent candidate only. And since Candelaria B. Recabo is an independent candidate, she cannot be validly substituted because under Sec. 11 of Comelec Res. No. 2977 promulgated on January 15, 1998, "no substitution shall be allowed for an independent candidate."

On the other hand, respondent argues that the certificate of nomination and acceptance signed only by representative Matugas (and without the joint signature of representative Barbers) substantially complied with the party requirements and are, therefore, valid as far as the party is concerned. Respondent maintains that his nomination is valid. Respondent further argues that the Commission has no jurisdiction to rule on who between petitioner and respondent has a valid certificate of candidacy.

Respondent likewise claims that the certificate of nomination in favor of petitioner (Annex A-1) is falsified because it was notarized in Mainit, Surigao del Norte at a time when the signatories therein (Fidel Ramos and Jose de Venecia, Jr.) were not in said place. Respondent however has not presented any evidence to this effect."^[2]

Based on the foregoing, the respondent Commission cancelled the certificate of candidacy of petitioner Kaiser B. Recabo, Jr. On May 14, 1998, petitioner Recabo, Jr. filed a motion for reconsideration and a supplement thereto on May 22, 1998. Francisco R. Reyes, Jr. filed his opposition. On July 1, 1998, the Commission en banc issued a resolution denying the motion for reconsideration for lack of merit.

Hence, the instant petition on the following grounds:

"1. The certificate of candidacy of petitioner and that of his mother whom he substituted as candidate for Vice Mayor substantially complied with the requirements of being official candidate of the LAKAS-NUCD-UMDP party.

2. The people of Mainit, Surigao del Norte have spoken loud and clear in favor of petitioner by giving him a resounding majority of 1,102 votes or 12% of the votes cast for both of them.

3. By canceling the certificate of candidacy of petitioner, public respondent acted without or in excess of jurisdiction or with grave abuse of discretion, and there is no appeal or any plain, speedy and adequate

remedy in the ordinary course of law available to petitioner, except this present petition."^[3]

The respondent Commission rationalized the cancellation of petitioner's certificate of candidacy thus:

"It appears from the very wording of the certificate of nomination and acceptance of LAKAS NUCD-UMDP that joint signing of the certificate is required for validity. The body of the certificate begins by... **"WE, GOV. FRANCISCO T. MATUGAS and ROBERTO Z. BARBERS... as its Provincial Chairman and District Chairman, respectively, hereby nominate.**

The certificate continues..."WITNESS **OUR HANDS** this 18th day of March 1998"etc.

From the way the document is worded, the intent is that there should be two complete signatures on the certificate for the certificate to be valid.

The mischief in respondent's assertion to the effect that this Commission has no jurisdiction to rule on whose certificate of candidacy should be given due course is that if such a position is taken, it would give rise to a scenario whereby one single political party may make multiple nominations for a single elective position. Such is not the intent of our election laws and neither is such a situation the intent of the rules and regulations issued by this Commission.

We, therefore, rule that petitioner's certificate of candidacy be given due course and that respondent's certificate of candidacy be denied due course. First, because petitioner filed it much earlier than respondent and second, because the certificate of nomination and acceptance upon which respondent's certificate of candidacy is premised appears to be invalid. We find the theory of petitioner, that at best Candelaria Recabo is only an independent candidate, logical and valid. Consequently, she cannot be substituted by respondent. (Sec. 11, Comelec Res. 2977).

Furthermore, under Sec. 69 of the Omnibus Election Code, the Commission may motu proprio, or upon valid petition, refuse to give due course to or cancel a certificate of candidacy if it is shown that said certificate has been filed to put the election process in mockery or disrepute or by other circumstances or acts which clearly demonstrate that the candidate has no bona fide intention to run for office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate. To allow respondent to run under the circumstances adverted to herein would put the election process in mockery or disrepute for we would in effect be allowing an anomalous situation where a single political party may field-in multiple candidates for a single elective position."^[4]

To put matters in the proper perspective, we shall resolve the second issue first that the "electorate has spoken loud and clear in favor of petitioner by giving him a resounding majority of 1,102 votes or 12% of the votes cast for both of them".

Petitioner, in effect, argues that the "popular will as clearly expressed in votes cast and counted should prevail, such that the election of a candidate cannot be annulled because of formal defects in his certificate."^[5] Petitioner cites a number of cases to advance this position.^[6]

According to petitioner, on May 11, 1998, election day, he garnered 4,835 votes as against private respondent's votes of 3,733. As proof, petitioner Recabo, Jr. submitted a 'Certified List of Candidates with their Votes Obtained' dated May 14, 1998 and an undated 'Certified List of Winning Candidates' both signed by a certain Lydia P. Mahinay as Acting Election Officer, and Election Officer-OIC, respectively.^[7]

In *Garay vs. Commission on Elections*^[8] we had occasion to rule that:

"xxx. According to Section 17,^[9] a certificate of votes can only be "evidence to prove tampering, alteration, falsification or any other anomaly committed in the election returns concerned, when duly authenticated x x x." A certificate of votes does not constitute sufficient evidence of the true and genuine results of the election; only election returns are, pursuant to Sections 231, 233-236, and 238 of B.P. Blg. 881."^[10]

In like manner, neither is the certified list of winning candidates signed by the said Election Officer II and OIC sufficient evidence of the real results of the election. Moreover, we find that the certificate of votes does not conform with Section 16 of R.A. 6646 which reads:

"SEC. 16. *Certificate of Votes.*-After the counting of the votes cast in the precinct and announcement of the results of the election, and before leaving the polling place, the board of election inspectors shall issue a certificate of votes upon request of the duly accredited watchers. The certificate shall contain the number of votes obtained by each candidate written in words and figures, the number of the precinct, the name of the city or municipality, province, the total number of voters who voted in the precinct and the date and time issued, and shall be signed and thumbmarked by each member of the board."

The certificate of votes submitted by petitioner does not state the number of votes obtained in words; it does not state the number of the precinct, the total number of voters who voted in the precinct and the time issued. Most importantly, it was merely certified true and correct by a certain Lydia P. Mahinay as acting election officer. As aforequoted, Section 16 of R.A. 6646 requires that the certificate of votes be signed and thumbmarked by each member of the board of election inspectors.

Thus, the doctrine that a mere technicality cannot be used to frustrate the people's will finds no application in the case at bar considering that the results of the election have not been duly established.

This brings us to the first issue of whether "the certificate of candidacy of petitioner and that of his mother who he substituted as candidate for Vice Mayor substantially complied with the requirements of being official candidates of the LAKAS-NUCD-UMDP Party". The issue boils down to the validity of the certificate of nomination of petitioner by LAKAS NUCD-UMDP which is required to be attached and filed with the

certificate of candidacy, for apparently, petitioner possesses all the qualifications and none of the disqualifications provided by law and the contents of petitioner's certificate of candidacy are otherwise in order.

Preliminarily, it must be stated that in special civil actions for *certiorari*, the main issue is one of jurisdiction - lack of jurisdiction or grave abuse of discretion amounting to excess of jurisdiction.^[11] In the case at bar, we find that the findings and conclusions reached by the respondent Commission were not whimsical nor capricious. The respondent Commission acted within its powers and jurisdiction in canceling the certificate of candidacy of petitioner and there is no justification for this Court to interfere with the actions taken by the Comelec. The findings of the respondent Commission are supported by documentary evidence.

COMELEC Resolution No. 2977 which prescribes the rules and regulations governing the filing of certificates of candidacy in connection with the May 11, 1998 elections provides under Section 5 thereof:

"SECTION 5. *Certificate of nomination of official candidates by political party, x x x.*- The certificates of nomination by registered political parties, organizations or coalitions of their official candidates shall be filed with the certificates of candidacy not later than the last day for filing of certificates of candidacy as specified in Section 4 hereof, duly signed and attested under oath by the party president, chairman, secretary-general or any other party officer duly authorized in writing to do so.

xxx xxx xxx."

Pursuant to said resolution, the political party of LAKAS NUCD-UMDP issued an 'Authorization' designating two (2) Party officers to nominate, sign, attest under oath and issue the Official Certificates of Nomination, namely, Francisco T. Matugas and Robert Ace S. Barbers. Consistent with the foregoing, the certificate of nomination and acceptance, as pointed out by the respondent Commission, requires the joint signing of the two party officers. The fact that only Francisco T. Matugas signed the certificate of nomination of petitioner Recabo, Jr. leaves the same open to question. On the other hand, the certificate of nomination of private respondent Reyes, Jr. was signed by no less than Fidel V. Ramos and Jose De Venecia, Jr. as the National Chairman and Secretary General, respectively of the LAKAS NUCD-UMDP party. By and large, the best authority to interpret a rule is the source itself of the rule, in this case the COMELEC.^[12]

Moreover, the chronology of events would still call for the cancellation of petitioner's certificate of candidacy to curb the evil that the respondent Commission sought to abate pursuant to its mandate to hold free, orderly, honest, peaceful and credible elections.^[13] As the respondent Commission stated, "to allow respondent to run under the circumstances adverted to herein would put the election process in mockery and disrepute for we would in effect be allowing an anomalous situation where a single political party may field-in multiple candidates for a single election position."

It will be recalled that the mother of herein petitioner filed her certificate of candidacy on March 25, 1998 and later withdrew the same on March 31, 1998. In the meantime, private respondent Reyes, Jr. filed his certificate of candidacy on