



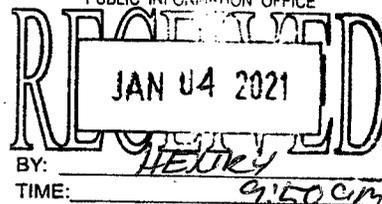
Republic of the Philippines
Supreme Court

Manila

EN BANC

NOTICE

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated JUNE 9, 2020, which reads as follows:

“G.R. No. 247805 (Alfredo N. Luna, Jr., Petitioner, v. Commission on Elections [Second Division], Jose A. Loquinte, and Roberto A. Loquinte, Respondents); and G.R. No. 248376 (Alfredo N. Luna, Jr., Petitioner, v. Commission on Elections [Second Division], Jose A. Loquinte, and Roberto A. Loquinte, Respondents). – Before the Court are special civil actions for *certiorari* filed under Rule 64 in relation to Rule 65 of the Rules of Court.

In G.R. No. 247805, Alfredo N. Luna, Jr. (petitioner) imputes grave abuse of discretion on the part of the Commission on Elections (COMELEC) Second Division for its issuance of the Resolution dated 08 May 2019¹ and Certificate of Finality² dated 13 June 2019, which cancelled petitioner’s Certificate of Candidacy (CoC) and declared the cancellation as final, respectively.

On the other hand, petitioner, in G.R. No. 248376, accuses the COMELEC Second Division of grave abuse of discretion in rendering the Order³ dated 15 July 2019, which dismissed petitioner’s motion for reconsideration of the Resolution dated 08 May 2019.

Antecedents

On 17 October 2018, petitioner filed his CoC for the position of Mayor of the Municipality of Anahawan, Southern Leyte for the 13 May

¹ *Rollo*, pp. 35-40; concurred in by Presiding Commissioner Luetito F. Guia and Commissioner Antonio T. Kho, Jr., and dissented by Commissioner Socorro B. Inting.

² *Id.* at 110-112.

³ *Id.* at 20-21.

2019 National and Local Elections. In his CoC, petitioner declared himself to be a resident of *Brgy. Mahalo, Anahawan, Southern Leyte*. His period of residence in the said municipality was reflected as two (2) years and three (3) months.⁴

Less than a month later, respondent Jose A. Loquinte (Loquinte) filed a *Petition with Motion for Suspension of Proclamation Ad Cautelam* seeking the denial of due course to and/or cancellation of petitioner's CoC. Loquinte claimed that petitioner made material misrepresentations in his CoC when the latter claimed to be a resident of *Brgy. Mahalo, Anahawan, Southern Leyte* for two (2) years and three (3) months. According to Loquinte, petitioner does not own a house or property in Anahawan and has just recently transferred his voter's registration to Anahawan on 28 July 2018. Further, petitioner is supposedly known to be a businessman operating in Cagayan de Oro and not in Anahawan or in the nearby municipalities.⁵

In response, petitioner insisted that he is a registered voter of Anahawan, Southern Leyte and has resided therein for two (2) years and three (3) months. He was born, baptized, grew up and constantly returned home to Anahawan even though he constructed a house at Cagayan de Oro City and established his engineering business at Tagaloan, Misamis Oriental. Though he was previously registered as a voter in Tagaloan, Misamis Oriental, this is not sufficient to consider him to have abandoned or lost his residence at *Brgy. Mahalo, Anahawan, Southern Leyte*. Lastly, he claims he has *animus revertendi* and never abandoned his residence in Anahawan.⁶

On 08 May 2019, the COMELEC Second Division promulgated the assailed resolution granting Loquinte's petition and cancelling petitioner's CoC, *viz*:

WHEREFORE, premises considered, the Commission (*Second Division*) **RESOLVES** to **GRANT THE PETITION** and correspondingly, Respondent **ALFREDO NIOG LUNA, JR.**'s Certificate of Candidacy is **DENIED DUE COURSE AND CANCELLED** pursuant to Section 78 of the Omnibus Election Code.

SO ORDERED.⁷

⁴*Id.* at 36.

⁵*Id.* at 35-37.

⁶*Id.* at 37.

⁷*Id.* at 40.

As ruled by the COMELEC Second Division, petitioner failed to meet the requirement of being a resident of Anahawan, Southern Leyte for at least one (1) year prior to the elections on 13 May 2019. It gave more credence to evidence presented by Loquinte composed of the following: (a) Certification from the Office of the Municipal Assessor of Anahawan, which shows petitioner not owning any real property in the said municipality; (b) Certification from Anahawan Election Officer II Sunilito B. Evaldez certifying petitioner to have applied for transfer of his registration record only on 28 July 2018; (c) Certification from the *Punong Barangay* of *Barangay* Mahalo that petitioner is not a known resident of the said *barangay*; and (d) Certification from the Office of the Municipal Treasurer of Anahawan showing petitioner has no business operation in the said municipality.⁸ Notwithstanding the pronouncement of the COMELEC, petitioner won in the local elections.⁹

Petitioner was served a copy of the assailed resolution on 23 May 2019.¹⁰ Six (6) days later, or on 29 May 2019, petitioner filed his motion for reconsideration. Said motion was received by the COMELEC on 13 June 2019.¹¹ On the same day, however, the COMELEC Second Division issued the assailed Certificate of Finality dated 13 June 2019¹² since their records did not reflect any motion for reconsideration filed by petitioner within the reglementary period of five (5) days from receipt of the promulgated resolution.¹³

Aggrieved by the above issuances, petitioner filed a petition for *certiorari* before this Court on 08 July 2019 docketed as G.R. No. 247805.

Subsequently, on 15 July 2019, the COMELEC Second Division rendered the assailed order denying petitioner's motion for reconsideration for being filed out of time. The said order also recognized that a certificate of finality was already issued by the commission thereby precluding any other action in the case.¹⁴

Hence, petitioner filed anew a petition for *certiorari* to question the COMELEC's Order dated 15 July 2019 docketed as G.R. No. 248376.

⁸*Id.* at 38-40.

⁹*Id.* at 8.

¹⁰*Id.* at 111.

¹¹*Id.* at 20.

¹²*Id.* at 110-112.

¹³*Id.* at 111.

¹⁴*Id.* at 20.

June 9, 2020

On 24 September 2019, the Court *En Banc* resolved to deny the *Extremely Urgent Motion for Issuance of Temporary Restraining Order or Status Quo Order* dated 09 September 2019 filed by petitioner in G.R. No. 247805.¹⁵ On the same day, the Court *En Banc*, through a separate resolution, ordered the consolidation of herein petitions for *certiorari*.¹⁶

Issues

In G.R. No. 247805, petitioner posits the following issues for consideration of the Court, to wit:

I.

WITH ALL DUE RESPECTS (SIC), THE COMELEC, SECOND DIVISION, GRAVELY ABUSED OR OTHERWISE GROSSLY EXCEEDED ITS JURISDICTION AMOUNTING TO LACK OF JURISDICTION WARRANTING THE IMMEDIATE ISSUANCE OF A TEMPORARY RESTRAINING ORDER WHEN IT ACTED ARBITRARILY, WHIMSICALLY AND CAPRICIOUSLY IN ISSUING A CERTIFICATE OF FINALITY ON THE SUPPOSITION THAT PETITIONER DID NOT FILE HIS MOTION FOR RECONSIDERATION DESPITE THE FACT THAT THE RECORDS WOULD SHOW OTHERWISE.

II.

WITH ALL DUE RESPECTS (SIC), THE COMELEC, SECOND DIVISION, GRAVELY ABUSED OR OTHERWISE GROSSLY EXCEEDED ITS JURISDICTION AMOUNTING TO LACK OF JURISDICTION IN FINDING THAT THE PETITIONER COMMITTED MATERIAL MISREPRESENTATION WHEN HE DECLARED IN HIS CERTIFICATE OF CADIDACY THAT HE HAS BEEN A RESIDENT OF ANAHAWAN, SOUTHERN LEYTE FOR TWO (2) YEARS AND THREE (3) MONTHS.¹⁷

Meanwhile, in G.R. No. 248376, petitioner relies on the following grounds for the grant of petition, *viz*:

I

WITH ALL DUE RESPECTS (SIC), THE COMELEC, SECOND DIVISION, GRAVELY ABUSED OR OTHERWISE GROSSLY EXCEEDED ITS JURISDICTION AMOUNTING TO LACK OF JURISDICTION [IN] WARRANTING THE IMMEDIATE ISSUANCE OF A TEMPORARY RESTRAINING ORDER OR STATUS QUO ORDER WHEN IT ACTED

¹⁵*Id.* at 83.

¹⁶*Id.* at 55.

¹⁷*Id.* at 6 (G.R. No. 247805).

ARBITRARILY, WHIMSICALLY AND CAPRICIOUSLY IN ISSUING AN ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERTION IN GROSS VIOLATION OF SECTION 5, Rule 20 OF COMELEC RESOLUTION NO. 8804, OTHERWISE KNOWN AS THE "COMELEC RULES OF PROCEDURE ON DISPUTES IN AN AUTOMATED ELECTION SYSTEM" REQUIRING THAT THE MOTION FOR RECONSIDERATION WOULD BE DISPOSED [OF] ONLY BY THE COMMISSION ON ELECTIONS EN BANC AND AFTER IT HAD ALREADY ISSUED A CERTIFICATE OF FINALITY.

II

WITH ALL DUE RESPECTS (SIC), PETITIONER'S COUNSEL ON RECORD DID NOT COMMIT ANY MATERIAL REPRESENTATION WHEN HE DECLARED THAT HE WAS IN RECEIPT OF COMELEC'S RESOLUTION DATED 8 MAY 2019 ON 24 MAY 2019.¹⁸

According to petitioner, he did not commit material misrepresentation in his CoC when he declared himself to be a resident of *Brgy. Mahalo, Anawahan* for more than one (1) year since he never abandoned his domicile of origin. In addition, the COMELEC Second Division acted with grave abuse of discretion in issuing a Certificate of Finality despite his filing of a motion for reconsideration. Lastly, the denial of his motion for reconsideration should have been by the COMELEC *En Banc* in accordance with its rules of procedure.¹⁹

In his comment, Loquinte argues that evidence presented would support the ruling of the COMELEC Second Division cancelling petitioner's CoC. In fact, it was allegedly discovered that petitioner was a candidate during the May 2018 *Barangay* and SK Elections at *Brgy. Mohon, Tagoloan, Misamis Oriental* as evidenced by petitioner's CoC for the position of *Barangay Kagawad*. Hence, petitioner could not have satisfied the residency requirement of one (1) year prior to the 2019 elections.²⁰

For its part, the COMELEC underscores petitioner's failure to file a timely motion for reconsideration thereby resulting to the Resolution dated 08 May 2019 becoming final and executory. Moreover, there was substantial evidence to show petitioner's failure to meet the one (1) year residency requirement such as the certification of the *punong barangay* of *Brgy. Mahalo* that petitioner is not a known resident of the *barangay*. Jurisprudence dictates that such sworn statement is given great weight as it

¹⁸*Id.* at 7 (G.R. No. 248376).

¹⁹*Id.* at 5-13 (G.R. No. 247805), 7-10 (G.R. No. 248376).

²⁰*Id.* at 102-106.

is the business of the *punong barangay* to know the residents of his *barangay*.²¹

Ruling of the Court

The petitions are bereft of merit.

Grave abuse of discretion, within the context of a special civil action for *certiorari* under Rule 65 of the Rules of Court, is defined as the arbitrary exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be condemned as having been done with grave abuse of discretion, such an abuse must be patent and gross.²² In the present case, petitioner utterly failed to show how the COMELEC Second Division rendered the assailed issuances with grave abuse of discretion.

It should be stressed that the COMELEC is the constitutional body having special knowledge and expertise over election matters. Thus, it is in a better position to rule on questions of fact, and its findings on such matters, when supported by substantial evidence, shall be final and non-reviewable.²³ Only upon proof that the COMELEC grossly disregarded evidence as to compel a contrary conclusion will its findings be set aside by the Court.²⁴

The term "residence" is to be understood not in its common acceptation as referring to "dwelling" or "habitation," but rather to "domicile" or legal residence, that is, "the place where a party actually or constructively has his permanent home, where he, no matter where he may be found at any given time, eventually intends to return and remain (*animus manendi*)."²⁵ A domicile of origin is acquired by every person at birth. It is usually the place where the child's parents reside and continues until the same is abandoned by acquisition of new domicile (domicile of choice). It consists not only in the intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention.²⁵

²¹*Id.* at 157-169.

²²*Hayudini v. COMELEC*, 733 Phil. 822, 885 (2014); G.R. No. 207900, 22 April 2014, 723 SCRA 223, 240.

²³*Mitra v. COMELEC*, 636 Phil. 753, 815 (2010); G.R. No. 191938, 02 July 2010, 622 SCRA 744.

²⁴*Pagaduan v. COMELEC*, 548 Phil. 427, 436 (2007); G.R. No. 172278, 29 March 2007, 519 SCRA 512.

²⁵*Caballero v. COMELEC*, 770 Phil. 94, 140 (2015); G.R. No. 209835, 22 September 2015, 771 SCRA 213.

The records show that the Resolution dated 08 May 2019 cancelling petitioner's CoC was based on a proper evaluation of the evidence. The certifications presented by Loquinte, especially that of the *punong barangay* stating petitioner was not a resident of *Brgy. Mahalo*, disputed petitioner's claim of bodily presence and intention to reside in the said place for at least one (1) year prior to the 2019 elections. Moreover, petitioner does not own any real estate in Anawahan but had admitted constructing a house in another city where his family lives and his children go to school.²⁶ In view of such facts, the COMELEC cannot be said to have acted with grave abuse of discretion when it cancelled petitioner's CoC.

Anent petitioner's motion for reconsideration, Section 2, Rule 19 of the COMELEC Rules of Procedure²⁷ fixes the period for filing said motions, thus:

SECTION 2. *Period for Filing Motions for Reconsideration.* - A motion to reconsider a decision, resolution, order, or ruling of a Division shall be filed **within five (5) days** from the promulgation thereof. Such motion, if not *proforma*, suspends the execution or implementation of the decision, resolution, order or ruling. (Emphasis supplied)

In connection thereto, Section 13(c), Rule 18 of the same rules states that "unless a motion for reconsideration is seasonably filed, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days in Special actions and Special cases."²⁸

On 23 May 2019, petitioner received the COMELEC's Resolution dated 08 May 2019. However, based on petitioner's own admission, he filed his motion for reconsideration only on 29 May 2019, which is beyond the five-day reglementary period provided by the COMELEC Rules of Procedure. Clearly, the questioned resolution had become final and executory due to petitioner's own failure to seasonably file a motion for reconsideration. Thus, the COMELEC Second Division cannot be faulted in issuing the Certificate of Finality dated 13 June 2019.

The rule is that the finality of a decision comes by operation of law. And, the effects of a final and executory decision take place as a matter of course unless interrupted by the filing of the appropriate legal remedy within the period stated in the rules. It is axiomatic that when a decision attains finality, it "becomes immutable and unalterable, and may no longer be

²⁶*Rollo*, p. 30.

²⁷15 February 1993.

²⁸*Id.*

modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land."²⁹

Nonetheless, petitioner also imputes grave abuse of discretion on the part of the COMELEC Second Division when, instead of the COMELEC *en banc*, it denied his motion for reconsideration in contrast to its own rules, to wit:

SECTION 5. *How Motion for Reconsideration Disposed Of.* — Upon the filing of a motion to reconsider a decision, resolution, order or ruling of a Division, the Clerk of Court concerned shall, within twenty-four (24) hours from the filing thereof, notify the Presiding Commissioner. The latter shall within two (2) days thereafter certify the case to the Commission *en banc*.

SECTION 6. *Duty of Clerk of Court of Commission to Calendar Motion for Resolution.* — The Clerk of Court concerned shall calendar the motion for reconsideration for the resolution of the Commission *en banc* within ten (10) days from the certification thereof.³⁰

However, the Court, in *San Juan v. Commission on Elections*,³¹ already settled that the denial of a motion for reconsideration by a Division of the COMELEC is valid when such motion was already filed out of time. The pertinent portion of the decision states:

Election cases must be heard and decided first in division, and any motion for reconsideration of decisions shall be decided by the Commission *en banc*.

X X X X

In this case, however, we need not tarry on the question of jurisdiction.

San Juan's Motion for Reconsideration was filed out of time. His lead counsel received a copy of the October 25, 2004 Resolution of the COMELEC First Division on November 3, 2004, yet he filed his Motion for Reconsideration only on November 16, 2004. Under Section 2, Rule 19 of the COMELEC Rules of Procedure, a motion for reconsideration of a decision, resolution, order or ruling of a Division must be filed within five days from promulgation thereof. **The Motion for Reconsideration having been filed out of time, its dismissal by the COMELEC First Division was valid and proper, not a grave abuse of discretion. Moreover, we find no need, in this case, to forward the matter to the**

²⁹*Chua v. COMELEC*, G.R. No. 236573, 14 August 2018.

³⁰Rule 19, COMELEC Rules of Procedure, 15 February 1993.

³¹557 Phil. 719, 725 (2007); G.R. No. 170908, 24 August 2007, 531 SCRA 178, 183.

COMELEC *en banc* where the result will be the same.³² (Emphasis supplied)

On this premise, the issuance of the Order dated 15 July 2019 denying petitioner's motion for reconsideration was likewise not tainted with grave abuse of discretion.

WHEREFORE, the petitions are hereby **DENIED**. The Resolution dated 08 May 2019, Certificate of Finality dated 13 June 2019 and Order dated 15 July 2019 rendered by the Commission on Elections in SPA No. 18-165 (DC) are **AFFIRMED**." Inting, J., no part. Delos Santos, J., on leave. (48)

By authority of the Court:


EDGAR O. ARICHETA
Clerk of Court

³²*Id.*

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