

## EN BANC

[ G.R. No. 206004, February 24, 2015 ]

### JOSEPH B. TIMBOL, PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.

#### R E S O L U T I O N

##### LEONEN, J.:

The power of the Commission on Elections (COMELEC) to restrict a citizen's right of suffrage should not be arbitrarily exercised. The COMELEC cannot *motu proprio* deny due course to or cancel an alleged nuisance candidate's certificate of candidacy without providing the candidate his opportunity to be heard.

This is a Petition<sup>[1]</sup> for Certiorari with prayer for issuance of preliminary mandatory injunction against the following issuances of the COMELEC: first, Resolution No. 9610<sup>[2]</sup> dated January 11, 2013, declaring petitioner Joseph B. Timbol (Timbol) a nuisance candidate and ordering the removal of his name from the certified list of candidates;<sup>[3]</sup> and second, Minute Resolution<sup>[4]</sup> dated February 5, 2013, denying his Petition to have his name listed in the certified list of candidates and printed on the ballots for the May 13, 2013 elections.<sup>[5]</sup>

On October 5, 2012, Timbol filed a Certificate of Candidacy<sup>[6]</sup> for the position of Member of the Sangguniang Panlungsod of the Second District of Caloocan City. On January 15, 2013, he received a Subpoena<sup>[7]</sup> from COMELEC Election Officer Dinah A. Valencia (Election Officer Valencia), ordering him to appear before her office on January 17, 2013 for a clarificatory hearing in connection with his Certificate of Candidacy.<sup>[8]</sup>

Timbol, together with his counsel, appeared before Election Officer Valencia. During the clarificatory hearing, Timbol argued that he was not a nuisance candidate. He contended that in the 2010 elections, he ranked eighth among all the candidates who ran for Member of the Sangguniang Panlungsod of the Second District of Caloocan City. He allegedly had sufficient resources to sustain his campaign.<sup>[9]</sup>

He pointed out before the clarificatory hearing panel that his name already appeared in the list of nuisance candidates posted in the COMELEC website pursuant to Resolution No. 9610 dated January 11, 2013. The clarificatory hearing panel allegedly assured him that his name would be deleted from the list and that his Certificate of Candidacy would be given due course.<sup>[10]</sup>

In the Memorandum<sup>[11]</sup> dated January 17, 2013, Election Officer Valencia recommended that Timbol's Certificate of Candidacy be given due course.<sup>[12]</sup>

Despite Election Officer Valencia's favorable recommendation, Timbol's name was not removed from the list of nuisance candidates posted in the COMELEC's website. With the printing of ballots for the automated elections set on February 4, 2013, Timbol filed on February 2, 2013 a Petition<sup>[13]</sup> praying that his name be included in the certified list of candidates for the May 13, 2013 elections.<sup>[14]</sup>

In the Minute Resolution dated February 5, 2013, the COMELEC denied the Petition for being moot, considering that the printing of ballots had already begun.<sup>[15]</sup>

On March 15, 2013,<sup>[16]</sup> Timbol filed his Petition for Certiorari with this court, arguing that the COMELEC gravely abused its discretion in declaring him a nuisance candidate.<sup>[17]</sup> According to Timbol, the COMELEC deprived him of due process of law when he was declared a nuisance candidate even before Election Officer Valencia conducted the clarificatory hearing.<sup>[18]</sup> He prayed for a preliminary mandatory injunction ordering the COMELEC to include his name in the certified list of candidates for the position of Member of Sangguniang Panlungsod of the Second District of Caloocan City.<sup>[19]</sup>

In the Resolution<sup>[20]</sup> dated April 16, 2013, this court ordered the Office of the Solicitor General to comment on behalf of the COMELEC.

In its Comment,<sup>[21]</sup> the COMELEC argued that the Petition was already moot and academic, considering that the May 13, 2013 elections had already been conducted.<sup>[22]</sup>

Even assuming that the Petition was not moot and academic, the COMELEC maintained that it did not gravely abuse its discretion. Contrary to Timbol's argument, he was given an opportunity to be heard when Election Officer Valencia heard him during the clarificatory hearing. He even admitted that he attended the clarificatory hearing with his counsel.<sup>[23]</sup>

Moreover, the COMELEC did not gravely abuse its discretion in denying Timbol's Petition to be included in the certified list of candidates, considering that the printing of ballots had already started.<sup>[24]</sup>

With these arguments, the COMELEC prayed that this court deny the Petition for lack of merit.<sup>[25]</sup>

In the Resolution<sup>[26]</sup> dated August 6, 2013, this court ordered Timbol to file a reply. When Timbol failed to file his reply despite receipt of the order,<sup>[27]</sup> we required Atty. Jose Ventura Aspiras (Atty. Aspiras), counsel for Timbol, to show cause why he should not be disciplinarily dealt with for failing to file a reply on behalf of his client in the Resolution<sup>[28]</sup> dated September 2, 2014. We likewise reiterated our order for Atty. Aspiras to file a reply for Timbol.<sup>[29]</sup> Still, Atty. Aspiras failed to comply with our show cause resolution.

We dispense with the filing of the reply and resolve to decide this case based on the Petition and the Comment.

The issues for this court's resolution are the following:

First, whether this case is moot and academic; and

Second, whether respondent COMELEC gravely abused its discretion in denying petitioner Timbol's Petition for inclusion in the certified list of candidates.

We deny the Petition.

## I

### **This case is moot and academic.**

A case is moot and academic if it "ceases to present a justiciable controversy because of supervening events so that a declaration thereon would be of no practical use or value."<sup>[30]</sup> When a case is moot and academic, this court generally declines jurisdiction over it.<sup>[31]</sup>

There are recognized exceptions to this rule. This court has taken cognizance of moot and academic cases when:

(1) there was a grave violation of the Constitution; (2) the case involved a situation of exceptional character and was of paramount public interest; (3) the issues raised required the formulation of controlling principles to guide the Bench, the Bar and the public; and (4) the case was capable of repetition yet evading review.<sup>[32]</sup> (Citation omitted)

We may no longer act on petitioner's prayer that his name be included in the certified list of candidates and be printed on the ballots as a candidate for Member of the Sangguniang Panlungsod. Petitioner filed with this court his Petition for Certiorari on March 15, 2013, 39 days after respondent began printing the ballots on February 4, 2013. Also, the May 13, 2013 elections had been concluded, with the winners already proclaimed.

That this case is moot and academic, however, does not preclude us from setting forth "controlling and authoritative doctrines"<sup>[33]</sup> to be observed by respondent in *motu proprio* denying due course to or cancelling certificates of candidacy of alleged nuisance candidates. This *motu proprio* authority is always subject to the alleged nuisance candidate's opportunity to be heard<sup>[34]</sup> — an essential element of procedural due process.<sup>[35]</sup>

## II

### **Respondent's power to *motu proprio* deny due course to a certificate of candidacy is subject to the candidate's opportunity to be heard.**

Under Article II, Section 26 of the Constitution, "[t]he State shall guarantee equal

access to opportunities for public service[.]" This, however, does not guarantee "a constitutional right to run for or hold public office[.]"<sup>[36]</sup> To run for public office is a mere "privilege subject to limitations imposed by law."<sup>[37]</sup> Among these limitations is the prohibition on nuisance candidates.

Nuisance candidates are persons who file their certificates of candidacy "to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no *bona fide* intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate."<sup>[38]</sup> In *Pamatong v. Commission on Elections*,<sup>[39]</sup> this court explained why nuisance candidates are prohibited from running for public office:

. . . The State has a compelling interest to ensure that its electoral exercises are rational, objective, and orderly. Towards this end, the State takes into account the practical considerations in conducting elections. Inevitably, the greater the number of candidates, the greater the opportunities for logistical confusion, not to mention the increased allocation of time and resources in preparation for the election. These practical difficulties should, of course, never exempt the State from the conduct of a mandated electoral exercise. At the same time, remedial actions should be available to alleviate these logistical hardships, whenever necessary and proper. Ultimately, a disorderly election is not merely a textbook example of inefficiency, but a rot that erodes faith in our democratic institutions. . . .

. . . The organization of an election with *bona fide* candidates standing is onerous enough. To add into the mix candidates with no serious intentions or capabilities to run a viable campaign would actually impair the electoral process. This is not to mention the candidacies which are palpably ridiculous so as to constitute a one-note joke. The poll body would be bogged by irrelevant minutiae covering every step of the electoral process, most probably posed at the instance of these nuisance candidates. It would be a senseless sacrifice on the part of the State.<sup>[40]</sup>

To minimize the logistical confusion caused by nuisance candidates, their certificates of candidacy may be denied due course or cancelled by respondent. This denial or cancellation may be "*motu proprio* or upon a verified petition of an interested party,"<sup>[41]</sup> "subject to an opportunity to be heard."<sup>[42]</sup>

The opportunity to be heard is a chance "to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of."<sup>[43]</sup> In election cases, due process requirements are satisfied "when the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand."<sup>[44]</sup>

In *Cipriano v. Commission on Elections*,<sup>[45]</sup> this court explained: