

## EN BANC

[ G.R. No. 206698, February 25, 2014 ]

### LUIS R. VILLAFUERTE , PETITIONER, VS. COMMISSION ON ELECTIONS AND MIGUEL R. VILLAFUERTE, RESPONDENTS.

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

##### PERALTA, J.:

Assailed via petition for *certiorari* and prohibition with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order is the Resolution<sup>[1]</sup> dated April 1, 2013 issued by the Commission on Elections (COMELEC) *En Banc*, which affirmed the Resolution<sup>[2]</sup> dated January 15, 2013 of its First Division dismissing petitioner Luis R. Villafuerte's verified petition to deny due course to or cancel the certificate of candidacy of Miguel R. Villafuerte (*respondent*).

Petitioner and respondent were both candidates for the Gubernatorial position of the Province of Camarines Sur in the May 13, 2013 local and national elections. On October 25, 2012, petitioner filed with the COMELEC a Verified Petition<sup>[3]</sup> to deny due course to or cancel the certificate of candidacy (COC) of respondent, alleging that respondent intentionally and materially misrepresented a false and deceptive name/nickname that would mislead the voters when he declared under oath in his COC that "L-RAY JR.-MIGZ" was his nickname or stagename and that the name he intended to appear on the official ballot was VILLAFUERTE, L-RAY JR.-MIGZ NP; that respondent deliberately omitted his first name "MIGUEL" and inserted, instead "LRAY JR.," which is the nickname of his father, the incumbent Governor of Camarines Sur, "LRay Villafuerte, Jr."

In his Answer with Special and Affirmative Defenses,<sup>[4]</sup> respondent denied the commission of any material misrepresentation and asserted, among others, that he had been using the nickname "LRAY JR. MIGZ" and not only "MIGZ"; that the choice of name/word to appear on the ballot was solely his choice or preference; and that the presumption that the voters would be confused on the simple fact that his name would be placed first in the ballot was misplaced.

On January 15, 2013, the COMELEC's First Division denied the petition for lack of merit and disposed as follows:

x x x no compelling reason why the COC of respondent should be denied due course to or cancelled on the sole basis of an alleged irregularity in his name/nickname. Laws and jurisprudence on the matter are clear that material misrepresentation in the COC pertains only to qualifications of a candidate, such as citizenship, residency, registration as a voter, age, etc. Nothing has been mentioned about a candidate's name/nickname as a ground to deny due course or cancel his/her COC. When the language of

the law is clear and explicit, there is no room for interpretation, only application.<sup>[5]</sup>

Petitioner filed a motion for reconsideration with the COMELEC *En Banc*, which denied the same in a Resolution dated April 1, 2013.

The COMELEC found that its First Division did not err in denying the petition as existing law and jurisprudence are clear in providing that a misrepresentation in a certificate of candidacy is material when it refers to a qualification for elective office and affects the candidate's eligibility; and that a misrepresentation of a non-material fact is not a ground to deny due course to or cancel a certificate of candidacy under Section 78 of the Omnibus Election Code. It found that petitioner's allegations did not pertain to respondent's qualifications or eligibility for the office to which he sought to be elected. The candidate's use of a name or nickname is not a ground to deny due course to or cancel a certificate of candidacy.

Dissatisfied, petitioner filed the instant petition for *certiorari* and prohibition alleging the following issues:

## I

Respondent COMELEC palpably and seriously committed grave abuse of discretion amounting to lack and/or in excess of jurisdiction when it whimsically and capriciously limited the grounds provided in Section 78 in relation to Section 74 of the Omnibus Election Code to a candidate's qualifications only and excluding as a ground a candidate's material representation that is false on his identity which renders him ineligible to be voted for as a candidate, because a false representation of ones' true name/nickname as a candidate is a deliberate attempt to misinform, mislead, and deceive the electorate and notwithstanding that Section 78 of the Omnibus Election Code expressly states that "any" material misrepresentation in violation of Section 74 of the same Code is a ground for cancellation of a Certificate of Candidacy.

## II

Respondent COMELEC committed serious errors and patent grave abuse of discretion amounting to lack and/or in excess of jurisdiction in failing or refusing to apply prevailing jurisprudence and law, wherein it was held: that cancellation of COC is not based on the lack of qualification although it may relate to qualification based on a "finding that a candidate made a material representation that is false"; thereby disregarding the well-entrenched rulings of this Honorable Court that material misrepresentation may also include ineligibilities to run for office or to assume office and is not limited to qualifications; utterly ignoring the ruling of this Honorable Court that votes cast in favor of a candidate using a nickname in violation of Section 74 are stray votes, and in turning a blind eye to its constitutional and statutory duty and responsibility to protect the rights of the voters and the integrity of the electoral processes in our country, among others.

## III

Respondent COMELEC whimsically, capriciously and despotically allowed herein respondent MIGUEL to use "LRAY JR.-MIGZ" and thereby illegally disregarded the effects of R.A. 8436 as amended by R.A. 9369 or the Automation Law and the requirement therein for the alphabetical arrangement of the names of the candidates and for allowing respondent Miguel to deliberately and misleadingly omit his baptismal first name MIGUEL which is mandatorily required by Section 74 to be included in his COC and for respondent Miguel to use more than one nickname for which he is not generally or popularly known in Camarines Sur.

#### IV

Material misrepresentation as contemplated by law is not to protect respondent as a candidate, but MORESO, to protect the right of other candidates under the Automation Law, and more importantly to protect the electorate from being misinformed, misled and deceived.<sup>[6]</sup>

The main issue for resolution is whether respondent committed a material misrepresentation under Section 78 of the Omnibus Election Code so as to justify the cancellation of his COC.

Petitioner filed the petition under Section 78 of the Omnibus Election Code claiming that respondent committed material misrepresentation when the latter declared in his COC that his name/nickname to be printed in the official ballot was VILLAFUERTE, LRAY JR.-MIGZ instead of his baptismal name, VILLAFUERTE, MIGUEL-MIGZ; that such declaration made under oath constitutes material misrepresentation even if the material misrepresentation did not refer to his qualifications but referred to his eligibility to be validly voted for as a candidate and, consequently, to his eligibility to assume office.

We find no merit in the argument.

Section 73 of the Omnibus Election Code states that no person shall be eligible for any elective public office unless he files a sworn COC within the period fixed herein. Section 74 thereof enumerates the contents of the COC, to wit:

*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 imposed 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.

Unless a candidate has officially changed his name through a court approved proceeding, a certificate shall use in a certificate of candidacy the name by which he has been baptized, or if has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case of a Muslim, his Hadji name after performing the prescribed religious pilgrimage: Provided, That when there are two or more candidates for an office with the same name and surname, each candidate, upon being made aware of such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.

The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-data and program of government not exceeding one hundred words, if he so desires.

And the proper procedure to be taken if a misrepresentation is committed by a candidate in his COC is to question the same by filing a verified petition pursuant to Section 78, thus:

*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 a certificate of candidacy may be filed by any person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

Clearly, Section 78 states that the false representation in the contents of the COC required under Section 74 must refer to material matters in order to justify the cancellation of the COC. What then constitutes a material misrepresentation?

In *Salcedo II v. Commission on Elections*,<sup>[7]</sup> petitioner Victorino Salcedo II filed with the COMELEC a petition seeking cancellation of respondent Ermelita Salcedo's (*Ermelita*) COC on the ground that she had made material misrepresentation by stating her surname as Salcedo. Petitioner claimed that Ermelita had no right to use the surname Salcedo, since her marriage to Neptali Salcedo was void. The COMELEC *En Banc* found that Ermelita did not commit any misrepresentation nor usurp another's name since she had the right to use her husband's surname for being married to him, and thus, validated her proclamation as Mayor of Sara, Iloilo. Salcedo appealed the COMELEC's resolution, and we held:

In case there is a material misrepresentation in the certificate of candidacy, the Comelec is authorized to deny due course to or cancel such certificate upon the filing of a petition by any person pursuant to Section 78 x x x

As stated in the law, in order to justify the cancellation of the certificate of candidacy under Section 78, it is essential that the false representation

mentioned therein pertain[s] to a material matter for the sanction imposed by this provision would affect the substantive rights of a candidate — the right to run for the elective post for which he filed the certificate of candidacy. Although the law does not specify what would be considered as a “material representation,” the Court has interpreted this phrase in a line of decisions applying Section 78 of the Code.<sup>[8]</sup>

x x x x

Therefore, it may be concluded that the material misrepresentation contemplated by Section 78 of the Code refer to qualifications for elective office. This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation in his certificate of candidacy are grave — to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. It could not have been the intention of the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake.

x x x x

Aside from the requirement of materiality, a false representation under Section 78 must consist of a “deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.” In other words, it must be made with an intention to deceive the electorate as to one’s qualifications for public office. The use of surname, when not intended to mislead, or deceive the public as to one's identity is not within the scope of the provision.<sup>[9]</sup>

In *Aratea v. Commission on Elections*,<sup>[10]</sup> we proclaimed Estela D. Antipolo, the alleged second placer, as Mayor of San Antonio, Zambales, being the one who remained as the sole qualified candidate for the mayoralty post and obtained the highest number of votes, since the COC of Romeo D. Lonzanida, the first placer, was declared void *ab initio*. We find that violation of the three-term limit is an eligibility affecting the qualification of a candidate to elective office and the misrepresentation of such is a ground to grant the petition to deny due course or cancel a COC. We said that:

Section 74 requires the candidate to certify that he is eligible for the public office he seeks election. Thus, Section 74 states that "the certificate of candidacy shall state that the person filing x x x is eligible for said office." The three-term limit rule, enacted to prevent the establishment of political dynasties and to enhance the electorate's freedom of choice, is found both in the Constitution and the law. After being elected and serving for three consecutive terms, an elective local official cannot seek immediate reelection for the same office in the next regular election because he is ineligible. One who has an ineligibility to run for elective public office is not "eligible for [the] office." As used in Section 74, the word "eligible" means having the right to run for elective public office, that is, having all the qualifications and none of the ineligibilities to run for the public office.<sup>[11]</sup>