

## EN BANC

[ G.R. No. 205136, December 02, 2014 ]

### OLIVIA DA SILVA CERAIFICA, PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.

#### DECISION

##### PEREZ, J.:

For the consideration of the Court is the Special Civil Action for *Certiorari* under Rule 64 of the Revised Rules of Court, assailing the ruling of respondent Commission on Elections (Comelec) which cancelled the Certificate of Candidacy (COC) of Kimberly Da Silva Cerafica (Kimberly) and denied the substitution of Kimberly by petitioner Olivia Da Silva Cerafica (Olivia).

On 1 October 2012, Kimberly filed her COC for Councilor, City of Taguig for the 2013 Elections. Her COC stated that she was born on 29 October 1992, or that she will be twenty (20) years of age on the day of the elections,<sup>[1]</sup> in contravention of the requirement that one must be at least twenty-three (23) years of age on the day of the elections as set out in Sec. 9 (c) of Republic Act (R.A.) No. 8487 (*Charter of the City of Taguig*).<sup>[2]</sup> As such, Kimberly was summoned to a clarificatory hearing due to the age qualification.

Instead of attending the hearing, Kimberly opted to file a sworn Statement of Withdrawal of COC on 17 December 2012.<sup>[3]</sup> Simultaneously, Olivia filed her own COC as a substitute of Kimberly. Owing to these events, the clarificatory hearing no longer pushed through.

In a Memorandum dated 18 December 2012, Director Esmeralda Amora-Ladra (Director Amora-Ladra) of the Comelec Law Department recommended the cancellation of Kimberly's COC, and consequently, the denial of the substitution of Kimberly by Olivia. Relying on Comelec Resolution No. 9551,<sup>[4]</sup> Director Amora-Ladra opined that it is as if no COC was filed by Kimberly; thus, she cannot be substituted.

In a Special *En Banc* Meeting of the Comelec on 3 January 2013,<sup>[5]</sup> the Comelec adopted the recommendation of Director Amora-Ladra, cancelled Kimberly's COC, and denied the substitution of Kimberly by Olivia as an effect of the cancellation of Kimberly's COC, viz:<sup>[6]</sup>

The Commission **RESOLVED**, as it hereby **RESOLVES**, to approve the foregoing recommendation of Director Esmeralda-Amora-Ladra, Law Department, as follows:

1. To **cancel** the Certificate of Candidacy (COC) of aspirant Kimberly Da Silva Cerafica without prejudice to any civil, criminal or

administrative liability that she may have incurred pursuant to Section 14 of COMELEC Resolution 9518; and

2. To **deny** the substitution of Kimberly Da Silva Cerafica by Olivia Da Silva Cerafica as an effect of the cancellation of the COC of Kimberly.

Let the Law Department implement this resolution.

**SO ORDERED.**

Olivia then filed the present petition for *certiorari* with Prayer for the Issuance of a Temporary Restraining Order, Status *Quo Ante* Order, and/or Writ of Preliminary Mandatory Injunction, raising the following issues:<sup>[7]</sup>

I.

WHETHER PUBLIC RESPONDENT COMMISSION ON ELECTIONS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION AND CONTRARY TO LAW AND JURISPRUDENCE IN ISSUING THE ASSAILED MINUTE RESOLUTION RESULTING IN THE CANCELLATION OF THE CERTIFICATE OF CANDIDACY (COC) OF ASPIRANT KIMBERLY DA SILVA CERAIFICA AND THE DENIAL OF THE SUBSTITUTION OF KIMBERLY DA SILVA CERAIFICA BY OLIVIA DA SILVA CERAIFICA AS AN EFFECT OF THE CANCELLATION OF THE COC OF KIMBERLY.

II.

WHETHER PUBLIC RESPONDENT COMMISSION ON ELECTIONS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION AND CONTRARY TO LAW AND JURISPRUDENCE WHEN IT RULED THAT THERE WAS NO VALID SUBSTITUTION BY PETITIONER FOR KIMBERLY RESULTING IN THE *MOTU PROPRIO* DENIAL OF PETITIONER'S CERTIFICATE OF CANDIDACY.

III.

WHETHER PUBLIC RESPONDENT COMMISSION ON ELECTIONS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION AND CONTRARY TO LAW AND JURISPRUDENCE IN ISSUING THE ASSAILED RESOLUTION WITHOUT GIVING PETITIONER AN OPPORTUNITY TO BE HEARD, THEREBY RESULTING IN THE *MOTU PROPRIO* DENIAL OF THE SUBSTITUTION OF KIMBERLY DA SILVA CERAIFICA BY OLIVIA DA SILVA CERAIFICA.

In its Comment<sup>[8]</sup> filed on 22 April 2013, respondent Comelec argued that Olivia cannot substitute Kimberly as the latter was never an official candidate because she was not eligible for the post by reason of her age, and that, moreover, the COC that Kimberly filed was invalid because it contained a material misrepresentation relating to her eligibility for the office she seeks to be elected to.<sup>[9]</sup> The Comelec further averred that it can cancel Kimberly's COC *motu proprio* as it may look into patent

defects in the COCs, such as Kimberly's failure to comply with the age requirement.  
[10]

In her Reply<sup>[11]</sup> filed on 10 May 2013, Olivia countered that although Kimberly may not be qualified to run for election because of her age, it cannot be denied that she still filed a valid COC and was, thus, an official candidate who may be substituted.  
[12] Olivia also claimed that there was no ground to cancel or deny Kimberly's COC on the ground of lack of qualification and material misrepresentation because she did not misrepresent her birth date to qualify for the position of councilor, and as there was no deliberate attempt to mislead the electorate, which is precisely why she withdrew her COC upon learning that she was not qualified.<sup>[13]</sup>

At the outset, we note that a verification with the Comelec database yields the finding that Olivia was not among the official candidates<sup>[14]</sup> for the 2013 Elections and, thus, was not voted for.<sup>[15]</sup> As such, a ruling on the present petition would no longer be of practical use or value. Even if we were to resolve the petition for the purpose of determining Olivia's legal status as a legitimate and qualified candidate for public office, such purpose has been rendered inconsequential as a result of the proclamation of the winning councilors for the 2013 elections.<sup>[16]</sup>

Be that as it may, the Court deems it opportune to address the merits of the case, if only to caution the Comelec against the precipitate cancellation of COCs.

In *Albaña v. Comelec*,<sup>[17]</sup> we held that where the issues have become moot and academic, there is no justiciable controversy, thereby rendering the resolution of the same of no practical use or value. Nonetheless, courts will decide a question otherwise moot and academic if it is capable of repetition, yet evading review. In this case, we find it necessary to resolve the issues raised in the petition in order to prevent a repetition thereof and, thus, enhance free, orderly, and peaceful elections.

### **VALID SUBSTITUTION**

In declaring that Kimberly, being under age, could not be considered to have filed a valid COC and, thus, could not be validly substituted by Olivia, we find that the Comelec gravely abused its discretion.

Firstly, subject to its authority over nuisance candidates<sup>[18]</sup> and its power to deny due course to or cancel COCs under Sec. 78, Batas Pambansa (B.P.) Blg. 881, the Comelec has the ministerial duty to receive and acknowledge receipt of COCs.<sup>[19]</sup>

In *Cipriano v. Comelec*,<sup>[20]</sup> we ruled that the Comelec has no discretion to give or not to give due course to COCs. We emphasized that the duty of the Comelec to give due course to COCs filed in due form is ministerial in character, and that while the Comelec may look into patent defects in the COCs, it may not go into matters not appearing on their face. The question of eligibility or ineligibility of a candidate is thus beyond the usual and proper cognizance of the Comelec.

Section 77 of the Omnibus Election Code (B.P. Blg. 881) provides for the procedure of substitution of candidates, to wit:

**Sec. 77. Candidates in case of death, disqualification or withdrawal of another.** – If after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified. The substitute candidate nominated by the political party concerned may file his certificate of candidacy for the office affected in accordance with the preceding sections not later than mid-day of election day of the election. If the death, withdrawal or disqualification should occur between the day before the election and mid-day of election day, said certificate may be filed with any board of election inspectors in the political subdivision where he is candidate or, in case of candidates to be voted for by the entire electorate of the country, with the Commission.

Under the express provision of Sec. 77 of B. P. Blg. 881, not just any person, but only “an official candidate of a registered or accredited political party” may be substituted.<sup>[21]</sup> In the case at bar, Kimberly was an official nominee of the Liberal Party;<sup>[22]</sup> thus, she can be validly substituted.

The next question then is whether Olivia complied with all of the requirements for a valid substitution; we answer in the affirmative. First, there was a valid withdrawal of Kimberly’s COC after the last day for the filing of COCs; second, Olivia belongs to and is certified to by the same political party to which Kimberly belongs;<sup>[23]</sup> and third, Olivia filed her COC not later than mid-day of election day.<sup>[24]</sup>

In *Luna v. Comelec*,<sup>[25]</sup> where the candidate, who was also under age, withdrew his COC before election day and was substituted by a qualified candidate, we declared that such substitution was valid. The Court eloquently explained:

***Substitution of Luna for Hans Roger was Valid***

Luna contends that Hans Roger filed a valid certificate of candidacy and, subsequently, upon Hans Roger’s withdrawal of his certificate of candidacy, there was a valid substitution by Luna.

On the other hand, the COMELEC ruled that Hans Roger, being under age, could not be considered to have filed a valid certificate of candidacy and, therefore, is not a valid candidate who could be substituted by Luna.

When a candidate files his certificate of candidacy, the COMELEC has a ministerial duty to receive and acknowledge its receipt. Section 76 of the Omnibus Election Code (Election Code) provides:

**Sec. 76. Ministerial duty of receiving and acknowledging receipt.** – The Commission, provincial election supervisor, election registrar or officer designated by the Commission or the board of election inspectors under the succeeding section shall have the ministerial duty to receive and acknowledge receipt of the certificate of candidacy.