

EN BANC

[G.R. No. 207264, October 22, 2013]

REGINA ONGSIAKO REYES, PETITIONER, VS. COMMISSION ON ELECTIONS AND JOSEPH SOCORRO B. TAN, RESPONDENTS.

R E S O L U T I O N

PEREZ, J.:

This is a Motion for Reconsideration of the *En Banc* Resolution of 25 June 2013 which stated that:

"IN VIEW OF THE FOREGOING, the instant petition is DISMISSED, finding no grave abuse of discretion on the part of the Commission on Elections. The 14 May 2013 Resolution of the COMELEC *En Banc* affirming the 27 March 2013 Resolution of the COMELELEC First Division is upheld."

In her Motion for Reconsideration, petitioner summarizes her submission, thus:

"81. Stated differently, the Petitioner x x x is not asking the Honorable Court to make a determination as regards her qualifications, she is merely asking the Honorable Court to affirm the jurisdiction of the HRET to solely and exclusively pass upon such qualifications and to set aside the COMELEC Resolutions for having denied Petitioner her right to due process and for unconstitutionally adding a qualification not otherwise required by the constitution."^[1] (as originally underscored)

The first part of the summary refers to the issue raised in the petition, which is:

"31. Whether or not Respondent Comelec is without jurisdiction over Petitioner who is duly proclaimed winner and who has already taken her oath of office for the position of Member of the House of Representatives for the lone congressional district of Marinduque."^[2]

Tied up and neatened the propositions on the COMELEC-or-HRET jurisdiction go thus: petitioner is a duly proclaimed winner and having taken her oath of office as member of the House of Representatives, all questions regarding her qualifications are outside the jurisdiction of the COMELEC and are within the HRET exclusive jurisdiction.

The averred proclamation is the critical pointer to the correctness of petitioner's submission. The crucial question is whether or not petitioner could be proclaimed on

18 May 2013. Differently stated, was there basis for the proclamation of petitioner on 18 May 2013?

Dates and events indicate that there was no basis for the proclamation of petitioner on 18 May 2013. Without the proclamation, the petitioner's oath of office is likewise baseless, and without a precedent oath of office, there can be no valid and effective assumption of office.

We have clearly stated in our Resolution of 25 June 2013 that:

"More importantly, we cannot disregard a fact basic in this controversy – that before the proclamation of petitioner on 18 May 2013, the COMELEC *En Banc* had already finally disposed of the issue of petitioner's lack of Filipino citizenship and residency via its Resolution dated 14 May 2013. After 14 May 2013, there was, before the COMELEC, no longer any pending case on petitioner's qualifications to run for the position of Member of the House of Representatives. x x x"

As the point has obviously been missed by the petitioner who continues to argue on the basis of her "due proclamation," the instant motion gives us the opportunity to highlight the undeniable fact we here repeat that the proclamation which petitioner secured on 18 May 2013 was WITHOUT ANY BASIS.

1. Four (4) days BEFORE the 18 May 2013 proclamation, or on 14 May 2013, the COMELEC *En Banc* has already denied for lack of merit the petitioner's motion to reconsider the decision of the COMELEC First Division that CANCELLED petitioner's certificate of candidacy.
2. On 18 May 2013, there was already a standing and unquestioned cancellation of petitioner's certificate of candidacy which cancellation is a definite bar to her proclamation. On 18 May 2003, that bar has not been removed, there was not even any attempt to remove it.
3. The COMELEC Rules indicate the manner by which the impediment to proclamation may be removed. Rule 18, Section 13 (b) provides:

"(b) In Special Actions and Special Cases a decision or resolution of the Commission En Banc shall become final and executory after five (5) days from its promulgation unless restrained by the Supreme Court."

Within that five (5) days, petitioner had the opportunity to go to the Supreme Court for a restraining order that will remove the immediate effect of the *En Banc* cancellation of her certificate of candidacy. Within the five (5) days the Supreme Court may remove the barrier to, and thus allow, the proclamation of petitioner. That did not happen. Petitioner did not move to have it happen.

It is error to argue that the five days should pass before the petitioner is barred from being proclaimed. Petitioner lost in the COMELEC as respondent. Her certificate of candidacy has been ordered cancelled. She could not be proclaimed because

there was a final finding against her by the COMELEC.^[3] She needed a restraining order from the Supreme Court to avoid the final finding. After the five days when the decision adverse to her became executory, the need for Supreme Court intervention became even more imperative. She would have to base her recourse on the position that the COMELEC committed grave abuse of discretion in cancelling her certificate of candidacy and that a restraining order, which would allow her proclamation, will have to be based on irreparable injury and demonstrated possibility of grave abuse of discretion on the part of the COMELEC. In this case, before and after the 18 May 2013 proclamation, there was not even an attempt at the legal remedy, clearly available to her, to permit her proclamation. What petitioner did was to "take the law into her hands" and secure a proclamation in complete disregard of the COMELEC *En Banc* decision that was final on 14 May 2013 and final and executory five days thereafter.

4. There is a reason why no mention about notice was made in Section 13(b) of Rule 18 in the provision that the COMELEC *En Banc* or decision "[SHALL] become [FINAL AND EXECUTORY] after five days from its promulgation unless restrained by the Supreme Court." On its own the COMELEC *En Banc* decision, unrestrained, moves from promulgation into becoming final and executory. This is so because in Section 5 of Rule 18, it is stated:

Section 5. Promulgation. – The promulgation of a decision or resolutions of the Commission or a division shall be made on a date previously fixed, of which notice shall be served in advance upon the parties or their attorneys personally or by registered mail or by telegram.

5. Apart from the presumed notice of the COMELEC *En Banc* decision on the very date of its promulgation on 14 May 2013, petitioner admitted in her petition before us that she in fact received a copy of the decision on 16 May 2013.^[4] On that date, she had absolutely no reason why she would disregard the available legal way to remove the restraint on her proclamation, and, more than that, to in fact secure a proclamation two days thereafter. The utter disregard of a final COMELEC *En Banc* decision and of the Rule stating that her proclamation at that point MUST be on permission by the Supreme Court is even indicative of bad faith on the part of the petitioner.

6. The indicant is magnified by the fact that petitioner would use her tainted proclamation as the very reason to support her argument that she could no longer be reached by the jurisdiction of the COMELEC; and that it is the HRET that has exclusive jurisdiction over the issue of her qualifications for office.

7. The suggestions of bad faith aside, petitioner is in error in the conclusion at which she directs, as well as in her objective quite obvious from such conclusion. It is with her procured proclamation that petitioner nullifies the COMELEC's decision, by Division and then *En Banc*, and pre-empts any Supreme Court action on the COMELEC decision. In other words, petitioner repudiates by her proclamation all administrative and judicial actions thereon, past and present. And by her proclamation, she claims as acquired the congressional seat that she sought to be a candidate for. As already shown, the reasons that lead to the impermissibility of the objective are clear. She cannot sit as Member of the House of Representatives by

virtue of a baseless proclamation knowingly taken, with knowledge of the existing legal impediment.

8. Petitioner, therefore, is in error when she posits that at present it is the HRET which has exclusive jurisdiction over her qualifications as a Member of the House of Representatives. That the HRET is the sole judge of all contests relating to the election, returns and qualifications of the Members of the House of Representatives is a written constitutional provision. It is, however unavailable to petitioner because she is NOT a Member of the House at present. The COMELEC never ordered her proclamation as the rightful winner in the election for such membership.^[5] Indeed, the action for cancellation of petitioner's certificate of candidacy, the decision in which is the indispensable determinant of the right of petitioner to proclamation, was correctly lodged in the COMELEC, was completely and fully litigated in the COMELEC and was finally decided by the COMELEC. On and after 14 May 2013, there was nothing left for the COMELEC to do to decide the case. The decision sealed the proceedings in the COMELEC regarding petitioner's ineligibility as a candidate for Representative of Marinduque. The decision erected the bar to petitioner's proclamation. The bar remained when no restraining order was obtained by petitioner from the Supreme Court within five days from 14 May 2013.

9. When petitioner finally went to the Supreme Court on 10 June 2013 questioning the COMELEC First Division ruling and the 14 May 2013 COMELEC *En Banc* decision, her baseless proclamation on 18 May 2013 did not by that fact of promulgation alone become valid and legal. A decision favorable to her by the Supreme Court regarding the decision of the COMELEC *En Banc* on her certificate of candidacy was indispensably needed, not to legalize her proclamation on 18 May 2013 but to authorize a proclamation with the Supreme Court decision as basis.

10. The recourse taken on 25 June 2013 in the form of an original and special civil action for a writ of Certiorari through Rule 64 of the Rules of Court is circumscribed by set rules and principles.

a) The special action before the COMELEC which was a Petition to Cancel Certificate of Candidacy was a SUMMARY PROCEEDING or one "heard summarily." The nature of the proceedings is best indicated by the COMELEC Rule on Special Actions, Rule 23, Section 4 of which states that the Commission may designate any of its officials who are members of the Philippine Bar to hear the case and to receive evidence. COMELEC Rule 17 further provides in Section 3 that when the proceedings are authorized to be summary, in lieu of oral testimonies, the parties may, after due notice, be required to submit their position paper together with affidavits, counter-affidavits and other documentary evidence; x x x and that "[t]his provision shall likewise apply to cases where the hearing and reception of evidence are delegated by the Commission or the Division to any of its officials x x x."

b) The special and civil action of Certiorari is defined in the Rules of Court thus:

When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified

petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The accepted definition of grave abuse of discretion is: a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.^[6]

It is the category of the special action below providing the procedural leeway in the exercise of the COMELEC summary jurisdiction over the case, in conjunction with the limits of the Supreme Court's authority over the FINAL COMELEC ruling that is brought before it, that defines the way petitioner's submission before the Court should be adjudicated. Thus further explained, the disposition of 25 June 2013 is here repeated for affirmation:

Petitioner alleges that the COMELEC gravely abused its discretion when it took cognizance of "*newly-discovered evidence*" without the same having been testified on and offered and admitted in evidence. She assails the admission of the blog article of Eli Obligacion as hearsay and the photocopy of the Certification from the Bureau of Immigration. She likewise contends that there was a violation of her right to due process of law because she was not given the opportunity to question and present controverting evidence.

Her contentions are incorrect.

It must be emphasized that the COMELEC is not bound to strictly adhere to the technical rules of procedure in the presentation of evidence. Under Section 2 of Rule I, the COMELEC Rules of Procedure "shall be liberally construed in order x x x to achieve just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Commission." In view of the fact that the proceedings in a petition to deny due course or to cancel certificate of candidacy are summary in nature, then the "newly discovered evidence" was properly admitted by respondent COMELEC.

Furthermore, there was no denial of due process in the case at bar as petitioner was given every opportunity to argue her case before the COMELEC. From 10 October 2012 when Tan's petition was filed up to 27 March 2013 when the First Division rendered its resolution, petitioner had a period of five (5) months to adduce evidence. Unfortunately, she did not avail herself of the opportunity given her.

Also, in administrative proceedings, procedural due process only requires that the party be given the opportunity or right to be heard. As held in the case of *Sahali v. COMELEC*: