

## EN BANC

[ G.R. No. 193261, April 24, 2012 ]

### MEYNARDO SABILI, PETITIONER, VS. COMMISSION ON ELECTIONS AND FLORENCIO LIBREA, RESPONDENTS.

#### DECISION

##### SERENO, J.:

Before us is a Petition for Certiorari under Rule 64 in relation to Rule 65 of the Rules of Court, seeking to annul the Resolutions in SPA No. 09-047 (DC) dated 26 January 2010 and 17 August 2010 of the Commission on Elections (COMELEC), which denied due course to and canceled the Certificate of Candidacy (COC) of petitioner Meynardo Sabili (petitioner) for the position of Mayor of Lipa City for the May 2010 elections. At the

heart of the controversy is whether petitioner Sabili had complied with the one-year residency requirement for local elective officials.

When petitioner filed his COC<sup>[1]</sup> for mayor of Lipa City for the 2010 elections, he stated therein that he had been a resident of the city for two (2) years and eight (8) months. Prior to the 2010 elections, he had been twice elected (in 1995 and in 1998) as Provincial Board Member representing the 4<sup>th</sup> District of Batangas. During the 2007 elections, petitioner ran for the position of Representative of the 4<sup>th</sup> District of Batangas, but lost. The 4<sup>th</sup> District of Batangas includes Lipa City.<sup>[2]</sup> However, it is undisputed that when petitioner filed his COC during the 2007 elections, he and his family were then staying at his ancestral home in Barangay (Brgy.) Sico, San Juan, Batangas.

Private respondent Florencio Librea (private respondent) filed a "Petition to Deny Due Course and to Cancel Certificate of Candidacy and to Disqualify a Candidate for Possessing Some Grounds for Disqualification"<sup>[3]</sup> against him before the COMELEC, docketed as SPA No. 09-047 (DC). Citing Section 78 in relation to Section 74 of the Omnibus Election Code,<sup>[4]</sup> private respondent alleged that petitioner made material misrepresentations of fact in the latter's COC and likewise failed to comply with the one-year residency requirement under Section 39 of the Local Government Code.<sup>[5]</sup> Allegedly, petitioner falsely declared under oath in his COC that he had already been a resident of Lipa City for two years and eight months prior to the scheduled 10 May 2010 local elections.

In support of his allegation, private respondent presented the following:

1. Petitioner's COC for the 2010 elections filed on 1 December 2009<sup>[6]</sup>

2. 2009 Tax Declarations for a house and lot (TCT Nos. 173355, 173356 and buildings thereon) in Pinagtong-ulan, Lipa City registered under the name of Bernadette Palomares, petitioner's common-law wife<sup>[7]</sup>
3. Lipa City Assessor Certification of Property Holdings of properties under the name of Bernadette Palomares<sup>[8]</sup>
4. Affidavit executed by private respondent Florencio Librea<sup>[9]</sup>
5. *Sinumpaang Salaysay* executed by Eladio de Torres<sup>[10]</sup>
6. Voter Certification on petitioner issued by COMELEC Election Officer Juan D. Aguila, Jr.<sup>[11]</sup>
7. 1997 Voter Registration Record of petitioner<sup>[12]</sup>
8. National Statistics Office (NSO) Advisory on Marriages regarding petitioner<sup>[13]</sup>
9. Lipa City Assessor Certificate of No Improvement on Block 2, Lot 3, Brgy. Lood, Lipa City registered in the name of petitioner<sup>[14]</sup>
10. NSO Certificate of No Marriage of Bernadette Palomares<sup>[15]</sup>
11. Lipa City Assessor Certificate of No Improvement on Block 2, Lot 5, Brgy. Lood, Lipa City registered in the name of petitioner<sup>[16]</sup>
12. Lipa City Permits and Licensing Office Certification that petitioner has no business therein<sup>[17]</sup>
13. Apparent printout of a Facebook webpage of petitioner's daughter, Mey Bernadette Sabili<sup>[18]</sup>
14. Department of Education (DepEd) Lipa City Division Certification that the names Bernadette Palomares, Mey Bernadette Sabili and Francis Meynard Sabili (petitioner's son) do not appear on its list of graduates<sup>[19]</sup>
15. Certification from the Office of the Election Officer of Lipa City that Bernadette Palomares, Mey Bernadette Sabili and Francis Meynard Sabili do not appear in its list of voters<sup>[20]</sup>
16. Affidavit executed by Violeta Fernandez<sup>[21]</sup>
17. Affidavit executed by Rodrigo Macasaet<sup>[22]</sup>
18. Affidavit Executed by Pablo Lorzano<sup>[23]</sup>
19. Petitioner's 2007 COC for Member of House of Representative<sup>[24]</sup>

For ease of later discussion, private respondent's evidence shall be grouped as follows: (1) Certificates regarding ownership of real property; (2) petitioner's Voter Registration and Certification (common exhibits of the parties); (3) petitioner's COCs in previous elections; (3) Certifications regarding petitioner's family members; and (4) Affidavits of Lipa City residents.

On the other hand, petitioner presented the following evidence to establish the fact of his residence in Lipa City:

1. Affidavit executed by Bernadette Palomares<sup>[25]</sup>
2. Birth Certificate of Francis Meynard Sabili<sup>[26]</sup>
3. Affidavit of Leonila Suarez (Suarez)<sup>[27]</sup>
4. Certification of Residency issued by Pinagtong-ulan Barangay Captain, Dominador Honrade<sup>[28]</sup>
5. Affidavit executed by Rosalinda Macasaet<sup>[29]</sup>

6. Certificate of Appreciation issued to petitioner by the parish of Sto. Nino of Pinagtong-ulan<sup>[30]</sup>
7. Designation of petitioner in the Advisory Body (AB) of Pinagtong-ulan, San Jose/Lipa City Chapter of Guardians Brotherhood, Inc.<sup>[31]</sup>
8. COMELEC Voter Certification on petitioner issued by Election Officer Juan Aguila, Jr.<sup>[32]</sup>
9. COMELEC Application for Transfer/Transfer with Reactivation dated 6 June 2009 signed by Election Officer Juan Aguila, Jr.<sup>[33]</sup>
10. Petitioner's Income Tax Return for 2007<sup>[34]</sup>
11. Official Receipt for petitioner's income tax payment for 2007<sup>[35]</sup>
12. Petitioner's Income Tax Return for 2008<sup>[36]</sup>
13. Official Receipt for petitioner's income tax payment for 2008<sup>[37]</sup>
14. Birth Certificate of Mey Bernadette Sabili<sup>[38]</sup>
15. Affidavit executed by Jacinto Cornejo, Sr.<sup>[39]</sup>
16. Joint Affidavit of twenty-one (21) Pinagtong-ulan residents, including past and incumbent Pinagtong-ulan officials.<sup>[40]</sup>

For ease of later discussion, petitioner's evidence shall be grouped as follows: (1) his Income Tax Returns and corresponding Official Receipts for the years 2007 and 2008; (2) Certification from the *barangay* captain of Pinagtong-ulan; (3) Affidavit of his common-law wife, Bernadette Palomares; and (4) Affidavits from a previous property owner, neighbors, Certificate of Appreciation from the *barangay* parish and Memorandum from the local chapter of Guardians Brotherhood, Inc.

### ***The COMELEC Ruling***

In its Resolution dated 26 January 2010,<sup>[41]</sup> the COMELEC Second Division granted the Petition of private respondent, declared petitioner as disqualified from seeking the mayoralty post in Lipa City, and canceled his Certificate of Candidacy for his not being a resident of Lipa City and for his failure to meet the statutory one-year residency requirement under the law.

Petitioner moved for reconsideration of the 26 January 2010 Resolution of the COMELEC, during the pendency of which the 10 May 2010 local elections were held. The next day, he was proclaimed the duly elected mayor of Lipa City after garnering the highest number of votes cast for the said position. He accordingly filed a Manifestation<sup>[42]</sup> with the COMELEC *en banc* to reflect this fact.

In its Resolution dated 17 August 2010,<sup>[43]</sup> the COMELEC *en banc* denied the Motion for Reconsideration of petitioner. Although he was able to receive his copy of the Resolution, no prior notice setting the date of promulgation of the said Resolution was received by him. Meanwhile, Section 6 of COMELEC Resolution No. 8696 (Rules on Disqualification Cases Filed in Connection with the May 10, 2012 Automated National and Local Elections) requires the parties to be notified in advance of the date of the promulgation of the Resolution.

SEC. 6. *Promulgation.* – The promulgation of a Decision or Resolution of the Commission or a Division shall be made on a date previously fixed,

notice of which shall be served in advance upon the parties or their attorneys personally, or by registered mail, telegram, fax, or thru the fastest means of communication.

Hence, petitioner filed with this Court a Petition (Petition for Certiorari with Extremely Urgent Application for the Issuance of a Status Quo Order and for the Conduct of a Special Raffle of this Case) under Rule 64 in relation to Rule 65 of the Rules of Court, seeking the annulment of the 26 January 2010 and 17 August 2010 Resolutions of the COMELEC. Petitioner attached to his Petition a Certificate of Canvass of Votes and proclamation of Winning Candidates for Lipa City Mayor and Vice-Mayor issued by the City/Municipal Board of Canvassers,<sup>[44]</sup> as well as a copy of his Oath of Office.<sup>[45]</sup> He also attached to his Petition another Certification of Residency<sup>[46]</sup> issued by Pinagtong-ulan *Barangay* Captain Dominador Honrade and sworn to before a notary public.

On 7 September 2010, this Court issued a Status Quo Ante Order<sup>[47]</sup> requiring the parties to observe the status quo prevailing before the issuance of the assailed COMELEC Resolutions. Thereafter, the parties filed their responsive pleadings.

### ***Issues***

The following are the issues for resolution:

1. Whether the COMELEC acted with grave abuse of discretion when it failed to promulgate its Resolution dated 17 August 2010 in accordance with its own Rules of Procedure; and
2. Whether the COMELEC committed grave abuse of discretion in holding that Sabili failed to prove compliance with the one-year residency requirement for local elective officials.

### ***The Court's Ruling***

#### ***1. On whether the COMELEC acted with grave abuse of discretion when it failed to promulgate its Resolution dated 17 August 2010 in accordance with its own Rules of Procedure***

Petitioner argues that the assailed 17 August 2010 COMELEC Resolution, which denied petitioner's Motion for Reconsideration, is null and void. The Resolution was allegedly not promulgated in accordance with the COMELEC's own Rules of Procedure and, hence, violated petitioner's right to due process of law.

The rules governing the Petition for Cancellation of COC in this case is COMELEC Resolution No. 8696 (Rules on Disqualification of Cases Filed in Connection with the May 10, 2010 Automated National and Local Elections), which was promulgated on 11 November 2009. Sections 6 and 7 thereof provide as follows:

SEC. 6. Promulgation. - The promulgation of a Decision or Resolution of the Commission or a Division shall be made on a date previously fixed, notice of which shall be served in advance upon the parties or their attorneys personally, or by registered mail, telegram, fax or thru the fastest means of communication.

SEC. 7. Motion for Reconsideration. - A motion to reconsider a Decision, Resolution, Order or Ruling of a Division shall be filed within three (3) days from the promulgation thereof. Such motion, if not pro-forma, suspends the execution for implementation of the Decision, Resolution, Order or Ruling.

Within twenty-four (24) hours from the filing thereof, the Clerk of the Commission shall notify the Presiding Commissioner. The latter shall within two (2) days thereafter certify the case to the Commission *en banc*.

The Clerk of the Commission shall calendar the Motion for Reconsideration for the resolution of the Commission *en banc* within three (3) days from the certification thereof.

However, the COMELEC Order dated 4 May 2010<sup>[48]</sup> suspended Section 6 of COMELEC Resolution No. 8696 by ordering that "all resolutions be delivered to the Clerk of the Commission for immediate promulgation" in view of "the proximity of the Automated National and Local Elections and lack of material time." The Order states:

#### ORDER

Considering the proximity of the Automated National and Local Elections and lack of material time, the Commission hereby suspends Sec. 6 of Resolution No. 8696 promulgated on November 11, 2009, which reads:

Sec. 6. Promulgation. - The promulgation of a Decision or Resolution of the Commission or a Division shall be made on a date previously fixed, notice of which shall be served upon the parties or their attorneys personally, or by registered mail, telegram, fax or thru the fastest means of communication."

Let all resolutions be delivered to the Clerk of the Commission for immediate promulgation.

SO ORDERED.

Petitioner claims that he did not receive notice of the said suspension of Section 6 of COMELEC Resolution No. 8696. Thus, his right to due process was still violated. On the other hand, the COMELEC claims that it has the power to suspend its own rules of procedure and invokes Section 6, Article IX-A of the Constitution, which gives it