

## EN BANC

[ G.R. No. 193237, October 09, 2012 ]

**DOMINADOR G. JALOSJOS, JR., PETITIONER, VS. COMMISSION  
ON ELECTIONS AND AGAPITO J. CARDINO, RESPONDENTS.**

[G.R. NO. 193536]

**AGAPITO J. CARDINO, PETITIONER, VS. DOMINADOR G.  
JALOSJOS, JR. AND COMMISSION ON ELECTIONS,  
RESPONDENTS.**

### D E C I S I O N

**CARPIO, J.:**

These are two special civil actions for *certiorari*<sup>[1]</sup> questioning the resolutions of the Commission on Elections (COMELEC) in SPA No. 09-076 (DC). In G.R. No. 193237, Dominador G. Jalosjos, Jr. (Jalosjos) seeks to annul the 10 May 2010 Resolution<sup>[2]</sup> of the COMELEC First Division and the 11 August 2010 Resolution<sup>[3]</sup> of the COMELEC En Banc, which both ordered the cancellation of his certificate of candidacy on the ground of false material representation. In G.R. No. 193536, Agapito J. Cardino (Cardino) challenges the 11 August 2010 Resolution of the COMELEC En Banc, which applied the rule on succession under the Local Government Code in filling the vacancy in the Office of the Mayor of Dapitan City, Zamboanga del Norte created by the cancellation of Jalosjos' certificate of candidacy.

#### The Facts

Both Jalosjos and Cardino were candidates for Mayor of Dapitan City, Zamboanga del Norte in the May 2010 elections. Jalosjos was running for his third term. Cardino filed on 6 December 2009 a petition under Section 78 of the Omnibus Election Code to deny due course and to cancel the certificate of candidacy of Jalosjos. Cardino asserted that Jalosjos made a false material representation in his certificate of candidacy when he declared under oath that he was eligible for the Office of Mayor.

Cardino claimed that long before Jalosjos filed his certificate of candidacy, Jalosjos had already been convicted by final judgment for robbery and sentenced to *prisión mayor* by the Regional Trial Court, Branch 18 (RTC) of Cebu City, in Criminal Case No. CCC-XIV-140-CEBU. Cardino asserted that Jalosjos has not yet served his sentence. Jalosjos admitted his conviction but stated that he had already been granted probation. Cardino countered that the RTC revoked Jalosjos' probation in an Order dated 19 March 1987. Jalosjos refuted Cardino and stated that the RTC issued an Order dated 5 February 2004 declaring that Jalosjos had duly complied with the order of probation. Jalosjos further stated that during the 2004 elections the COMELEC denied a petition for disqualification filed against him on the same grounds.<sup>[4]</sup>

The COMELEC En Banc narrated the circumstances of Jalosjos' criminal record as follows:

As backgrounder, [Jalosjos] and three (3) others were accused of the crime of robbery on January 22, 1969 in Cebu City. On April 30, 1970, Judge Francisco Ro. Cupin of the then Circuit Criminal Court of Cebu City found him and his co-accused guilty of robbery and sentenced them to suffer the penalty of prision correccional minimum to prision mayor maximum. [Jalosjos] appealed this decision to the Court of Appeals but his appeal was dismissed on August 9, 1973. It was only after a lapse of several years or more specifically on June 17, 1985 that [Jalosjos] filed a Petition for Probation before the RTC Branch 18 of Cebu City which was granted by the court. But then, on motion filed by his Probation Officer, [Jalosjos'] probation was revoked by the RTC Cebu City on March 19, 1987 and the corresponding warrant for his arrest was issued. Surprisingly, on December 19, 2003, Parole and Probation Administrator Gregorio F. Bacolod issued a Certification attesting that respondent Jalosjos, Jr., had already fulfilled the terms and conditions of his probation. This Certification was the one used by respondent Jalosjos to secure the dismissal of the disqualification case filed against him by Adasa in 2004, docketed as SPA No. 04-235.

This prompted [Cardino] to call the attention of the Commission on the decision of the Sandiganbayan dated September 29, 2008 finding Gregorio F. Bacolod, former Administrator of the Parole and Probation Administration, guilty of violating Section 3(e) of R.A. 3019 for issuing a falsified Certification on December 19, 2003 attesting to the fact that respondent Jalosjos had fully complied with the terms and conditions of his probation. A portion of the decision of the Sandiganbayan is quoted hereunder:

The Court finds that the above acts of the accused gave probationer Dominador Jalosjos, [Jr.,] unwarranted benefits and advantage because the subject certification, which was issued by the accused without adequate or official support, was subsequently utilized by the said probationer as basis of the Urgent Motion for Reconsideration and to Lift Warrant of Arrest that he filed with the Regional Trial Court of Cebu City, which prompted the said court to issue the Order dated February 5, 2004 in Crim. Case No. CCC-XIV-140-CEBU, declaring that said probationer has complied with the order of probation and setting aside its Order of January 16, 2004 recalling the warrant or [sic] arrest; and that said Certification was also used by the said probationer and became the basis for the Commission on Elections to deny in its Resolution of August 2, 2004 the petition or [sic] private complainant James Adasa for the disqualification of the probationer from running for re-election as Mayor of Dapitan City in the National and Local Elections of 2004.<sup>[5]</sup>

### **The COMELEC's Rulings**

On 10 May 2010, the COMELEC First Division granted Cardino's petition and cancelled Jalosjos' certificate of candidacy. The COMELEC First Division concluded that "Jalosjos has indeed committed material misrepresentation in his certificate of candidacy when he declared, under oath, that he is eligible for the office he seeks to be elected to when in fact he is not by reason of a final judgment in a criminal case, the sentence of which he has not yet served."<sup>[6]</sup> The COMELEC First Division found that Jalosjos' certificate of compliance of probation was fraudulently issued; thus, Jalosjos has not yet served his sentence. The penalty imposed on Jalosjos was the indeterminate sentence of one year, eight months and twenty days of *prisión correccional* as minimum, to four years, two months and one day of *prisión mayor* as maximum. The COMELEC First Division ruled that Jalosjos "is not eligible by reason of his disqualification as provided for in Section 40(a) of Republic Act No. 7160."<sup>[7]</sup>

On 11 August 2010, the COMELEC En Banc denied Jalosjos' motion for reconsideration. The pertinent portions of the 11 August 2010 Resolution read:

With the proper revocation of [Jalosjos'] earlier probation and a clear showing that he has not yet served the terms of his sentence, there is simply no basis for [Jalosjos] to claim that his civil as well as political rights have been violated. Having been convicted by final judgment, [Jalosjos] is disqualified to run for an elective position or to hold public office. His proclamation as the elected mayor in the May 10, 2010 election does not deprive the Commission of its authority to resolve the present petition to its finality, and to oust him from the office he now wrongfully holds.

WHEREFORE, in view of the foregoing, the Motion for Reconsideration is denied for utter lack of merit. [Jalosjos] is hereby OUSTED from office and ordered to CEASE and DESIST from occupying and discharging the functions of the Office of the Mayor of Dapitan City, Zamboanga. Let the provisions of the Local Government Code on succession apply.

SO ORDERED.<sup>[8]</sup>

Jalosjos filed his petition on 25 August 2010, docketed as G.R. No. 193237, while Cardino filed his petition on 17 September 2010, docketed as G.R. No. 193536.

On 22 February 2011, this Court issued a Resolution dismissing G.R. No. 193237.

WHEREFORE, the foregoing premises considered, the Petition for Certiorari is DISMISSED. The assailed Resolution dated May 10, 2010 and Resolution dated August 11, 2010 of the Commission on Elections in SPA Case No. 09-076 (DC) are hereby AFFIRMED.<sup>[9]</sup>

Cardino filed a Manifestation on 17 March 2011 praying that this Court take judicial notice of its resolution in G.R. No. 193237. Jalosjos filed a Motion for Reconsideration<sup>[10]</sup> on 22 March 2011. On 29 March 2011, this Court resolved<sup>[11]</sup> to consolidate G.R. No. 193536 with G.R. No. 193237.

Jalosjos then filed a Manifestation on 1 June 2012 which stated that “he has resigned from the position of Mayor of the City of Dapitan effective 30 April 2012, which resignation was accepted by the Provincial Governor of Zamboanga del Norte, Atty. Rolando E. Yebes.”<sup>[12]</sup> Jalosjos’ resignation was made “[i]n deference with the provision of the Omnibus Election Code in relation to [his] candidacy as Provincial Governor of Zamboanga del Sur in May 2013.”<sup>[13]</sup>

These cases are not rendered moot by Jalosjos’ resignation. In resolving Jalosjos’ Motion for Reconsideration in G.R. No. 193237 and Cardino’s Petition in G.R. No. 193536, we address not only Jalosjos’ eligibility to run for public office and the consequences of the cancellation of his certificate of candidacy, but also COMELEC’s constitutional duty to enforce and administer all laws relating to the conduct of elections.

### **The Issues**

In G.R. No. 193237, Jalosjos argues that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it (1) ruled that Jalosjos’ probation was revoked; (2) ruled that Jalosjos was disqualified to run as candidate for Mayor of Dapitan City, Zamboanga del Norte; and (3) cancelled Jalosjos’ certificate of candidacy without making a finding that Jalosjos committed a deliberate misrepresentation as to his qualifications, as Jalosjos relied in good faith upon a previous COMELEC decision declaring him eligible for the same position from which he is now being ousted. Finally, the Resolutions dated 10 May 2010 and 11 August 2010 were issued in violation of the COMELEC Rules of Procedure.

In G.R. No. 193536, Cardino argues that the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it added to the dispositive portion of its 11 August 2010 Resolution that the provisions of the Local Government Code on succession should apply.

### **This Court’s Ruling**

The **perpetual special disqualification** against Jalosjos arising from his criminal conviction by final judgment is a material fact involving eligibility which is a proper ground for a petition under Section 78 of the Omnibus Election Code. **Jalosjos’ certificate of candidacy was void from the start since he was not eligible to run for any public office at the time he filed his certificate of candidacy. Jalosjos was never a candidate at any time, and all votes for Jalosjos were stray votes.** As a result of Jalosjos’ certificate of candidacy being void *ab initio*, Cardino, as the only qualified candidate, actually garnered the highest number of votes for the position of Mayor.

The dissenting opinions affirm with modification the 10 May 2010 Resolution of the COMELEC First Division and the 11 August 2010 Resolution of the COMELEC En

Banc. The dissenting opinions erroneously limit the remedy against Jalosjos to disqualification under Section 68 of the Omnibus Election Code and apply the rule on succession under the Local Government Code.

A false statement in a certificate of candidacy that a candidate is eligible to run for public office is a false material representation which is a ground for a petition under Section 78 of the same Code. Sections 74 and 78 read:

*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.

*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 the 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. (Emphasis supplied)

Section 74 requires the candidate to state under oath in his certificate of candidacy **“that he is eligible for said office.”** A candidate is eligible if he has **a right to run for the public office.**<sup>[14]</sup> If a candidate is not actually eligible because he is barred by final judgment in a criminal case from running for public office, and he still states under oath in his certificate of candidacy that he is eligible to run for public office, then the candidate clearly makes a false material representation that is a ground for a petition under Section 78.

A sentence of *prisión mayor* by final judgment is a ground for disqualification under Section 40 of the Local Government Code and under Section 12 of the Omnibus Election Code. It is also a material fact involving the eligibility of a candidate under Sections 74 and 78 of the Omnibus Election Code. Thus, a person can file a petition under Section 40 of the Local Government Code or under either Section 12 or Section 78 of the Omnibus Election Code. The pertinent provisions read: