

EN BANC

[G.R. No. 188671, February 24, 2010]

MOZART P. PANLAQUI, PETITIONER, VS. COMMISSION ON ELECTIONS AND NARDO M. VELASCO, RESPONDENTS.

D E C I S I O N

CARPIO MORALES, J.:

The present petition is one for certiorari.

Petitioner Mozart Panlaqui (Panlaqui) assails the Commission on Elections (Comelec) *En Banc* Resolution of June 17, 2009 denying his motion for proclamation, which he filed after this Court affirmed in G.R. No. 180051^[1] the nullification of the proclamation of private respondent Nardo Velasco (Velasco) as mayor of Sasmuan, Pampanga.

Velasco was born in Sasmuan on June 22, 1952 to Filipino parents. He married Evelyn Castillo on June 29, 1975. In 1983, he moved to the United States where he subsequently became a citizen.

Upon Velasco's application for dual citizenship under Republic Act No. 9225^[2] was approved on July 31, 2006, he took on even date his oath of allegiance to the Republic of the Philippines and returned to the Philippines on September 14, 2006.

On October 13, 2006, Velasco applied for registration as a voter of Sasmuan, which application was denied by the Election Registration Board (ERB). He thus filed a petition for the inclusion of his name in the list of voters before the Municipal Trial Court (MTC) of Sasmuan which, by Decision of February 9, 2007, reversed the ERB's decision and ordered his inclusion in the list of voters of Sasmuan.

On appeal, the Regional Trial Court (RTC) of Guagua, Pampanga, by Decision of March 1, 2007, **reversed**^[3] the MTC Decision, drawing Velasco to elevate the matter via Rule 42 to the Court of Appeals which, by Amended Decision^[4] of August 19, 2008, dismissed the appeal for lack of jurisdiction.

In the meantime, Velasco filed on March 28, 2007 his Certificate of Candidacy (COC) for mayor of Sasmuan, therein claiming his status as a registered voter. Panlaqui, who vied for the same position, thereupon filed before the Comelec a Petition to Deny Due Course To and/or To Cancel Velasco's COC based on gross material misrepresentation as to his residency and, consequently, his qualification to vote.

In the electoral bout of May 2007, Velasco won over Panlaqui as mayor of Sasmuan. As the Comelec failed to resolve Panlaqui's petition prior to the elections, Velasco took his oath of office and assumed the duties of the office.

Finding material misrepresentation on the part of Velasco, the Comelec cancelled his COC and nullified his proclamation, by Resolutions of July 6, 2007 and October 15, 2007, which this Court affirmed in G.R. No. 180051.

Panlaqui thereafter filed a motion for proclamation which the Comelec denied by the assailed Resolution, pointing out that the rule on succession does not operate in favor of Panlaqui as the second placer because Velasco was not disqualified by final judgment *before* election day.

Hence, the present petition which imputes grave abuse of discretion on the part of the Comelec for not regarding the RTC March 1, 2007 Decision as the final judgment of disqualification against Velasco prior to the elections, so as to fall within the ambit of *Cayat v. Commission on Elections*^[5] on the exception to the doctrine on the rejection of the second placer.

Velasco filed his Comment of September 18, 2009 with motion to consolidate the present case with G.R. No. 189336, his petition challenging the Comelec's September 8, 2009 Order which directed him to vacate his mayoralty post for the incumbent vice-mayor to assume office as mayor. A perusal of the records of the petition shows, however, that it had already been dismissed by the Court by Resolution of October 6, 2009.^[6]

In his present petition, Panlaqui implores this Court to apply in his favor the case of *Cayat* where the Court affirmed, *inter alia*, the Comelec Order directing the proclamation of the second placer as Mayor of Buguias, Benguet in this wise:

There is no doubt as to the propriety of Palileng's proclamation for two basic reasons.

First, the COMELEC First Division's Resolution of 12 April 2004 cancelling Cayat's certificate of candidacy due to disqualification became **final and executory on 17 April 2004** when Cayat failed to pay the prescribed filing fee. Thus, Palileng was the **only** candidate for Mayor of Buguias, Benguet in the 10 May 2004 elections. Twenty-three days before election day, Cayat was already **disqualified by final judgment** to run for Mayor in the 10 May 2004 elections. As the only candidate, Palileng was not a second placer. On the contrary, Palileng was the sole and only placer, **second to none**. The doctrine on the rejection of the second placer, which triggers the rule on succession, does not apply in the present case because Palileng is not a second-placer but the only placer. Consequently, Palileng's proclamation as Mayor of Buguias, Benguet is beyond question.

Second, there are specific requirements for the application of the doctrine on the rejection of the second placer. The doctrine will apply in Bayacsan's favor, regardless of his intervention in the present case, if two conditions concur: (1) the decision on Cayat's disqualification **remained pending on election day**, 10 May 2004, resulting in the presence of two mayoralty candidates for Buguias, Benguet in the elections; and (2)