

EN BANC

[G.R. No. 157526, April 28, 2004]

EMILIANA TORAL KARE, PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.

[G.R. NO. 157527.]

SALVADOR K. MOLL, PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.

D E C I S I O N

PANGANIBAN, J.:

When a mayoral candidate who gathered the highest number of votes is disqualified after the election is held, a permanent vacancy is created, and the vice mayor succeeds to the position.

The Case

Before us are two Petitions for Certiorari under Rules 64 and 65 of the Rules of Court, seeking the nullification of the March 19, 2003 En Banc Resolution issued by the Commission on Elections (Comelec) in SPA No. 01-272. The Comelec resolved therein to disqualify Salvador K. Moll from the mayoralty of Malinao, Albay, and to proclaim Avelino Ceriola as the mayor-elect of the said municipality. The decretal portion of the Resolution reads:

"WHEREFORE, premises considered, the petition is hereby **GRANTED**. It is affirmed that private respondent Salvador K. Moll is **DISQUALIFIED** from holding the office of the Mayor of Malinao, Albay. His proclamation as the winning candidate for such office is declared **VOID AB INITIO**. Consequently, the Provincial Election Supervisor of Albay is directed to immediately convene the municipal board of canvassers of Malinao, Albay and **PROCLAIM** petitioner Avelino Ceriola as the Mayor-Elect of the municipality."^[1]

In GR No. 157526, Petitioner Emiliana Toral Kare seeks the nullification of the March 19, 2003 Resolution insofar as it authorized the proclamation of Ceriola as the mayor-elect of Malinao. In GR No. 157527, Petitioner Moll prays for the annulment of the entire Resolution.

The Facts

Petitioner Moll and Private Respondent Ceriola were candidates for mayor of the Municipality of Malinao, Albay, during the elections of May 14, 2001.

Moll obtained the highest number of votes cast for the position while Ceriola came in

second, with a total of nine hundred eighty-seven (987) votes separating the two. Kare was elected vice mayor in the same election.

On May 18, 2001, Ceriola filed a "Petition to Confirm the Disqualification and/or Ineligibility of Dindo K. Moll to Run for Any Elective Position." The Petition alleged that the latter had been sentenced by final judgment to suffer the penalty of six (6) months of *arresto mayor* to one (1) year and nine (9) months of *prision correccional*, for the crime of usurpation of authority or official functions under Article 177 of the Revised Penal Code.

In its May 28, 2001 Resolution,^[2] the Comelec First Division dismissed the Petition. Ceriola filed his Motion for Reconsideration with the Comelec en banc which, on August 31, 2001, set aside the said Resolution. It thereafter directed the clerk of the Comelec to remand the Petition to the provincial election supervisor of Albay for hearing and reception of evidence.

Ruling of the Comelec En Banc

On March 19, 2003, after the provincial election supervisor of Albay submitted the report and recommendation, the Comelec en banc issued the questioned Resolution affirming Moll's disqualification and proclaiming Ceriola as the mayor-elect of the municipality.

As earlier adverted to, the Comelec ruled that Moll had indeed been disqualified from being a mayoral candidate in the May 14, 2001 local election, and that his subsequent proclamation as mayor was void ab initio. Consequently, he was disqualified from holding that office.

The Comelec further ruled that the trial court's final judgment of conviction of Moll disqualified him from filing his certificate of candidacy and continued to disqualify him from holding office. Accordingly, the votes cast in his favor were stray or invalid votes, and Ceriola -- the candidate who had obtained the second highest number of votes -- was adjudged the winner. Thus, the Comelec ordered the Municipal Board of Canvassers to proclaim him as the mayor-elect of the municipality.

Before Ceriola's actual proclamation, Kare filed a Petition before this Court with a prayer for a Status Quo Order, which was granted on April 1, 2003.^[3] In this Order, the Comelec, the provincial election supervisor of Albay, and the municipal canvassers of Malinao (Albay) were required to observe the status quo prevailing before the filing of the Petition.

The other Petition was filed by Moll.^[4]

The Issues

After going through the Memoranda submitted by the parties, the Court has determined that the following are the two issues that have to be resolved:

1. Should Moll be disqualified from running and/or holding the position of mayor?

2. If the first issue is answered in the affirmative, who should become the mayor -- Ceriola, the second placer in the mayoral election? Or Kare, the elected vice mayor?

The Court's Ruling

The Petition in GR No. 157526 is partly meritorious, but the Petition in GR No. 157527 has no merit.

First Issue: **Disqualification**

Moll argues that he cannot be disqualified from running for mayor, since his judgement of conviction^[5] -- the basis of his disqualification -- has allegedly not yet attained finality. He contends that while the said judgment "promulgated on May 11, 1999 was not appealed by filing the Notice of Appeal in the ordinary course of the proceedings, he still filed a 'Motion for Reconsideration' dated May 28, 1999 within the reglementary period."^[6] Thus, according to him, the filing of such Motion stayed the finality of his conviction.

We disagree. Section 7 of Rule 120 of the 2000 Rules of Criminal Procedure reads thus:

"Sec. 7. Modification of judgment. -- A judgment of conviction may, upon motion of the accused, be modified or set aside before it becomes final or before appeal is perfected. Except where the death penalty is imposed, a judgment in a criminal case becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or when the accused has waived in writing his right to appeal, or has applied for probation." (Italics supplied)

In turn, Section 6 of Rule 122 provides:

"Sec. 6. When appeal to be taken. - An appeal must be taken within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from. This period for perfecting an appeal shall be interrupted from the time a motion for new trial or reconsideration is filed until notice of the order overruling the motion shall have been served upon the accused or his counsel at which time the balance of the period begins to run." (Italics supplied)

It is clear that the period for appeal is interrupted by the filing of either a motion for reconsideration or a motion for a new trial. Moll makes it appear that his filing of a motion for reconsideration should have stayed the running of the period for filing an appeal. What he did file, however, was a "Motion to Quash the Information"; and when it was denied, he filed a Motion for Reconsideration of the denial.

The Rules of Court mandates that an appeal should be filed within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from. It necessarily follows that this period is interrupted only by the filing of a motion for reconsideration of the judgment or of the final order being appealed.

Neither Moll's Motion to Quash Information nor his Motion for Reconsideration was

directed at the judgment of conviction. Rather, they both attacked a matter extraneous to the judgment. Hence, they cannot affect the period of appeal granted by the Rules of Court in relation to the conviction.

Moll himself admitted that “no regular appeal was filed because he was still questioning the propriety of the denial of his Motion to Quash the Information and the propriety of the conduct of the promulgation of his sentence despite his absence x x x.”^[7] Aside from not interrupting his judgment of conviction, the motion to quash was even belatedly filed. Such a motion may be filed by the accused at any time before entering a plea^[8] and certainly not on the day of the promulgation, as Moll did.

As to his contention that the promulgation of judgment was not valid because it was done in his absence, we agree with the Office of the Solicitor General, which argues as follows:

“It was not contested that Moll received a notice of the promulgation, in fact his counsel was present on the day of the promulgation -to file a motion to quash. Hence, because of Moll’s unexplained absence, the promulgation of the judgment could be validly made by recording the judgment in the criminal docket and serving him a copy thereof to his last known address or thru his counsel (Section 6, Rule 120, Rules of Court).”^[9]

Indubitably, since no appeal of the conviction was seasonably filed by Moll, the judgment against him has become final.^[10] Thus, the Comelec en banc correctly ruled that he was disqualified from running for mayor, under Section 40(a) of the Local Government Code (RA No. 7160), which provides:

“Section 40. *Disqualifications.* – The following persons are disqualified from running for any elective local position:

(a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;

x x x x x x x x x.”

Moll was sentenced to suffer the penalty of six (6) months of *arresto mayor* to one (1) year and nine (9) months of *prision correccional*, a penalty that clearly disqualified him from running for any elective local position.

Second Issue: **The Lawful Mayor**

In allowing Ceriola -- the second placer in the mayoralty race --to be proclaimed mayor-elect after the disqualification of Moll, the Comelec applied Section 211(24) of the Omnibus Election Code (OEC), which provides:

“Sec. 211. *Rules for the appreciation of ballots.* – In the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is clear and good reason to justify its rejection. The board of

election inspectors shall observe the following rules, bearing in mind that the object of the election is to obtain the expression of the voter's will:

x x x x x x x x x

24. Any vote cast in favor of a candidate who has been disqualified by final judgment shall be considered as stray and shall not be counted but it shall not invalidate the ballot."

The poll body interpreted the phrase "disqualified by final judgment" to mean "disqualification by a final judgment of conviction," which was the ground upon which Moll was disqualified. It ruled:

"In this case, the disqualification is based specifically on the final judgment of conviction by a court against private respondent. This final judgment disqualified private respondent from filing his certificate of candidacy in the first instance, and continues to disqualify private respondent from holding office. Accordingly, the votes cast in his favor were stray or invalid votes and the general rule in the Sunga Case does not apply. Consequently, petitioner, having obtained the highest number of valid votes, is entitled to be proclaimed the winning mayoralty candidate."^[11]

Further, it said:

"x x x As such, this instance constitutes an exception to the general rule enunciated in the Sunga Case. In the language of the said case, the foregoing provision of law is a statute which clearly asserts a legislative policy contrary to the rule that the candidate with the second highest number of votes cannot be declared the winner, given that the votes for the disqualified candidate, though of highest number, are deemed stray and invalid. Consequently, the so-called 'second placer' shall be declared the winner because he or she in fact obtained the highest number of valid votes."^[12]

Such arguments do not persuade.

In every election, the choice of the people is the paramount consideration, and their expressed will must at all times be given effect.^[13] When the majority speaks by giving a candidate the highest number of votes in the election for an office, no one else can be declared elected in place of the former.^[14] In a long line of cases, this Court has definitively ruled that the Comelec cannot proclaim as winner the candidate who obtained the second highest number of votes, should the winning candidate be declared ineligible or disqualified.^[15]

The Comelec, however, asserts that this case falls under the exception declared by the Court in *Sunga v. Comelec*,^[16] from which we quote:

"x x x The votes cast for a disqualified person may not be valid to install the winner into office or maintain him there. But in the absence of a statute which clearly asserts a contrary political and legislative policy on the matter, if the votes were cast in the sincere belief that the candidate