

EN BANC

[G.R. No. 147741, May 10, 2001]

REP. MA. CATALINA L. GO, PETITIONER, VS. COMMISSION ON ELECTIONS, FELIPE V. MONTEJO AND ARVIN V. ANTONI, RESPONDENTS.

D E C I S I O N

PARDO, J.:

The Case

In her petition for *certiorari*,^[1] petitioner seeks to nullify the resolution of the Commission on Elections (COMELEC) *en banc* declaring her disqualified to run for the office of governor of Leyte and mayor of Baybay, Leyte, because she filed certificates of candidacy for both positions and the withdrawal of her certificate of candidacy for mayor was filed late by twenty eight minutes from the deadline.

Forthwith, we issued an order^[2] to maintain the *status quo ante*, in effect allowing petitioner's certificate of candidacy for governor in the meantime.

In its Comment,^[3] the COMELEC justified its resolution on the ground that petitioner's affidavit of withdrawal of her certificate of candidacy for mayor of Baybay, Leyte was ineffectual because it was submitted twenty eight (28) minutes late at the office of the municipal election officer at Baybay. The facsimile copy thereof was filed with said office at 12:28 a.m., 1 March 2001, and the original copy thereof was actually received by the office of the municipal election officer of Baybay at 1:15 p.m., the same day. The provincial election supervisor of Leyte, with office at Tacloban City, to whom petitioner filed her certificate of candidacy for governor at 11:47 p.m., 28 February 2001, refused to accept the affidavit of withdrawal tendered simultaneously therewith because, as he claimed, the affidavit must be filed with the office of the municipal election officer of Baybay, Leyte where petitioner filed her certificate of candidacy for mayor.

The Facts

Petitioner is the incumbent representative of the Fifth District, province of Leyte, whose term of office will expire at noon on 30 June 2001.

On 27 February 2001, petitioner filed with the municipal election officer of the municipality of Baybay, Leyte, a certificate of candidacy for mayor of Baybay, Leyte.

On 28 February 2001, at 11:47 p.m., petitioner filed with the provincial election supervisor of Leyte, with office at Tacloban City, another certificate of candidacy for governor of the province of Leyte. Simultaneously therewith, she attempted to file with the provincial election supervisor an affidavit of withdrawal of her candidacy for

mayor of the municipality of Baybay, Leyte. However, the provincial election supervisor of Leyte refused to accept the affidavit of withdrawal and suggested that, pursuant to a COMELEC resolution, she should file it with the municipal election officer of Baybay, Leyte where she filed her certificate of candidacy for mayor.

At that late hour, with only minutes left to midnight, the deadline for filing certificates of candidacy or withdrawal thereof, and considering that the travel time from Tacloban to Baybay was two (2) hours, petitioner decided to send her affidavit of withdrawal by fax^[4] to her father at Baybay, Leyte and the latter submitted the same to the office of the election officer of Baybay, Leyte at 12:28 a.m., 01 March 2001.^[5] On the same day, at 1:15 p.m., the election officer of Baybay, Leyte, received the original of the affidavit of withdrawal.^[6]

On 05 March 2001, respondent Montejo filed with the provincial election supervisor of Leyte, at Tacloban City a petition to deny due course and/or to cancel the certificates of candidacy of petitioner.^[7] Respondent Antoni filed a similar petition to disqualify petitioner.^[8] The petitions were based on the ground that petitioner filed certificates of candidacy for two positions, namely, that for mayor of Baybay, Leyte, and that for governor of Leyte, thus, making her ineligible for both.

On 06 March 2001, Atty. Manuel L. Villegas, the provincial election supervisor of Leyte, by 1st indorsement, referred the cases to the Commission on Election, Manila, Law Department, on the ground that he was inhibiting himself due to his prior action of refusing to receive the petitioner's affidavit of withdrawal tendered simultaneously with the filing of the certificate of candidacy for governor on 28 February 2001.^[9]

In the meantime, the Law Department, COMELEC, under Director Jose P. Balbuena, made a study of the cases without affording petitioner an opportunity to be heard or to submit responsive pleadings. On 05 April 2001, they submitted a report and recommendation to the COMELEC *en banc*.^[10]

The report and recommendation reads:

"Submitted for due consideration is the petition filed by Atty. Felipe V. Montejo and Atty. Arvin V. Antoni on March 5, 2001, before the Office of the Provincial Election Supervisor of Leyte, seeking to deny due course and/or to cancel the certificate of candidacy of Catalina L. Go for Governor of Leyte.

"Both petitions which are exactly worded in the same language allege, as follows:

'This petition is heretofore filed pursuant to the provisions of Rule 23 of the COMELEC RULES OF PROCEDURE and Section 15, as well, of RESOLUTION NO. 3253-A of the COMELEC *EN BANC* promulgated on November 20, 2000. Ditto, this petition is filed within the reglementary period following the last day for the filing of certificates of candidacy on February 28, 2001.

'Petitioner Atty. Felipe V. Montejo is of voting age, Filipino,

Lawyer by profession, married, and a resident of #50 Juan Luna Street, Tacloban City, of which locality he is a registered voter.

'Respondent re. Catalina L. Go, on the other hand is likewise of legal age, married, resident of Baybay, Leyte, of which locality she is a registered voter, and the incumbent Member of the House of Representatives representing the 5th Congressional District of Leyte.

'Respondent CATALINA L. GO filed a certificate of candidacy for the office of Mayor of the Municipality of Baybay, Leyte on February 27, 2001. Without cancelling or withdrawing the said certificate of candidacy this time for the office of Provincial Governor of Leyte on February 28, 2001. However, before the expiration of the period for the filing of certificates of candidacy, respondent indubitably failed to declare under oath the office for which she desires to be eligible and cancel the certificate of candidacy for the other office.

'Verily, at the time respondent filed her certificate of candidacy for Provincial Governor, she knew fully well that she was ineligible for the said office, having filed, a day earlier, a certificate of candidacy for Mayor of Baybay, Leyte. Hence, respondent falsely represented in her certificate of candidacy for Provincial Governor, and under oath, that she is ELIGIBLE for the said office; a material fact required by law to be sworn to and contained in certificates of candidacy. In fine, respondent likewise falsely represented in her certificates of candidacy, under oath, that she will OBEY THE LAWS, ORDERS, DECREES, RESOLUTIONS AND REGULATIONS PROMULGATED AND ISSUED BY THE DULY CONSTITUTED AUTHORITIES; a material fact required by law to be sworn to and contained in certificates of candidacy.'

"Petitioners' ground to deny due course and/or to cancel the said certificate of candidacy is anchored on Section 73 of the Omnibus Election Code, quoted hereunder.

'No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed herein.

'No person shall be eligible for more than one office to be filled in the same election, and if he files his certificate of candidacy for more than one office, he shall not be eligible for any of them. However, before the expiration of the period for the filing of certificates of candidacy, the person who has filed more than one certificate of candidacy may declare under oath the office for which he desires to be eligible and cancel the certificate of candidacy for the other office or offices.'

"In relation to Section (1) (b) of the Comelec Resolution No. 3253-A, to wit:

'SECTION 1. Certificate of Candidacy. x x x x x (b) No person shall be eligible for more than one office to be filled in the same election. If he files a certificate of candidacy for more than one office he shall not be eligible for either. However, before the expiration of the period for the filing of certificate of candidacy, he may declare under oath the office for which he desire to be eligible and cancel the certificate of candidacy for the office or offices.'

"Moreover, petitioners contended that CATALINA LOPEZ LORETO-GO is ineligible to run for either Mayor of Baybay, Leyte or Governor of Leyte Province.

"Based on the certified list of candidate for the provincial candidates of Leyte on March 7, 2001, the certificate of candidacy of Catalina Lopez Loreto-Go for the position of Governor of Leyte was filed with the Office of the Provincial Election Supervisor on February 28, 2001 at 11:47 p.m. the last day for filing certificates of candidacy.

"In support of the petitions of Atty. Montejo and Atty. Antoni, is a certified machine copy of the affidavit of withdrawal of Catalina L. Loreto-Go, which was filed on March 01, 2001 at the Office of the Election Officer of Baybay, Leyte, which she filed on February 28, 2001.

"The affidavit of withdrawal of Catalina Loreto-Go, a portion of which reads:

"1. That last February 27, 2001 I filed my certificate of candidacy for Mayor for the MUNICIPALITY OF BAYBAY, LEYTE;

"2. That due to political exigency and influence from my political leaders urging me to run for Mayor of the Municipality of Baybay, Leyte, I have no other recourse but to follow desire of my political constituents;

"3. That therefore, I am formally withdrawing my certificate of candidacy for Mayor of the Municipality of Baybay, Leyte and in it stead I am formally filing my certificate for Governor of Leyte.

"A careful scrutiny and examination of Catalina Loreto-Go certificate of candidacy for Governor of Leyte Province, although filed on the last day of February 28, 2001, her affidavit of withdrawal for Mayor of Baybay, Leyte, was filed *only on March 1, 2001* or one (1) day after the February 28, 2001 deadline. In other word, there are two (2) certificates of candidacy filed by Catalina Loreto-Go, one for governor of Leyte and the other for Mayor of Baybay, Leyte.

"Clearly, on March 1, 2001 when she filed her affidavit of withdrawal for Mayor of Baybay, Leyte, both her certificates of candidacy for Mayor of Baybay, Leyte and Governor of Leyte were still subsisting and effective making her liable for filing two certificates of candidacy on different

elective positions, thus, rendering her ineligible for both positions, in accordance with Section (1) (b) of Comelec Resolution No. 3253-A.

"*PREMISES CONSIDERED*, the Law Department *RECOMMENDS* as follows:

"1.) To give due course to the petition of Atty. Felipe V. Montejo and Atty. Arvin V. Antonio against the certificates of candidacy of Catalina Loreto-Go for Governor of Leyte; and

"2.) To direct the Provincial Election Supervisor of Leyte and the Election Officer to delete/cancel the name of CATALINA LOPEZ LORETO-GO from the certified list of candidates for Governor of Leyte and Mayoralty candidates of Baybay, Leyte, and to accordingly notify the parties and the above-named Comelec Officials."^[11]

On 23 April 2001, the COMELEC *en banc* approved the recommendation of the Director, Law Department and adopted the resolution in question as set out in the opening paragraph of this decision.^[12]

Hence, this petition.^[13]

The Issues

At the oral argument on 07 May 2001, at 3:00 p.m., we defined the following issues to be addressed by the parties:

- I. Is petitioner disqualified to be candidate for governor of Leyte and mayor of Baybay, Leyte because she filed certificates of candidacy for both positions?
- II. Was there a valid withdrawal of the certificate of candidacy for municipal mayor of Baybay, Leyte?
 - (a) Must the affidavit of withdrawal be filed with the election officer of the place where the certificate of candidacy was filed?
 - (b) May the affidavit of withdrawal be validly filed by fax?
- II. Was there denial to petitioner of procedural due process of law?

The Court's Ruling

We grant the petition. We annul the COMELEC resolution declaring petitioner disqualified for both positions of governor of Leyte and mayor of the municipality of Baybay, Leyte. The filing of the affidavit of withdrawal with the election officer of Baybay, Leyte, at 12:28 a.m., 1 March 2001 was a substantial compliance with the requirement of the law.^[14]

We hold that petitioner's withdrawal of her certificate of candidacy for mayor of Baybay, Leyte was effective for all legal purposes, and left in full force her certificate of candidacy for governor.^[15]

Section 73, Batas Pambansa Blg. 881, otherwise known as the Omnibus Election Code, provides that: