



Republic of the Philippines  
Supreme Court  
Manila

EN BANC

**KAMARUDIN K. IBRAHIM,**  
Petitioner,

**G.R. No. 192289**

Present:

- versus -

SERENO, *CJ.*,  
CARPIO,  
VELASCO, JR.,  
LEONARDO-DE CASTRO,  
BRION,  
PERALTA,  
BERSAMIN,  
DEL CASTILLO,  
ABAD,  
VILLARAMA, JR.,  
PEREZ,  
MENDOZA,  
REYES,  
PERLAS-BERNABE, and  
LEONEN, *JJ.*

**COMMISSION ON ELECTIONS**  
**and ROLAN G. BUAGAS,**  
Respondents.

Promulgated:

**JANUARY 08, 2013**

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**DECISION**

**REYES, J.:**

Before us is a Petition for *Certiorari* and Prohibition with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order<sup>1</sup> filed under Rule 64 of the Rules of Court assailing the

<sup>1</sup> *Rollo*, pp. 3-24.

following resolutions of the public respondent Commission on Elections (COMELEC):

(a) Minute Resolution No. 09-0946<sup>2</sup> (December 22, 2009 Resolution), dated December 22, 2009, disqualifying the petitioner herein, Kamarudin K. Ibrahim (Ibrahim), from the 2010 Vice-Mayoralty race in Datu Unsay, Maguindanao for supposedly not being a registered voter of the said municipality; and

(b) Resolution<sup>3</sup> (May 6, 2010 Resolution) issued on May 6, 2010, relative to SPA Case No. 10-002 (MP) LOCAL, denying Ibrahim's opposition<sup>4</sup> to Resolution No. 09-0946.

### **Antecedent Facts**

On December 1, 2009, Ibrahim filed his certificate of candidacy to run as Vice-Mayor of Datu-Unsay in the May 10, 2010 elections. Thereafter, respondent Rolan G. Buagas (Buagas), then Acting Election Officer in the said municipality, forwarded to the COMELEC's Law Department (Law Department) the names of 20 candidates who were not registered voters therein. The list<sup>5</sup> included Ibrahim's name, along with those of two candidates for mayor, one for vice-mayor and 16 for councilor.

In a Memorandum<sup>6</sup> dated December 10, 2009, the Law Department brought to the attention of the COMELEC *en banc* the names of 56 candidates running for various posts in Maguindanao and Davao del Sur who were not registered voters of the municipalities where they sought to be elected. The Law Department recommended the retention of the said names

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<sup>2</sup> Id. at 26-29.

<sup>3</sup> Id. at 97-100.

<sup>4</sup> Id. at 66-73.

<sup>5</sup> Please see Memorandum dated December 2, 2009, id. at 37.

<sup>6</sup> Portions of the Memorandum were quoted in the "Excerpt from the Minutes of the Regular En Banc Meeting of the Commission on Elections Held on December 22, 2009, id. at 26-29.

in the Certified List of Candidates, but for the COMELEC to *motu proprio* institute actions against them for disqualification and for violation of election laws. Thereafter, the COMELEC *en banc* issued the herein assailed December 22, 2009 Resolution approving, but with modification, the Law Department's recommendation in the following wise:

1. to *disqualify* the foregoing candidates for not being registered voters of the respective municipalities where they seek to be *elected without prejudice to their filing of an opposition within two (2) days from publication hereof*; and
2. to file election offense cases against said candidates for violation of Sec. 74 in relation to Sec. 262 of the Omnibus Election Code.<sup>7</sup> (Italics ours)

On January 8, 2010, Ibrahim and 50 other candidates filed a Petition/Opposition<sup>8</sup> to assail the Resolution dated December 22, 2009. In the Petition/Opposition, which was docketed as SPA 10-002 (MP) LOCAL, it was stressed that some of those affected by the Resolution dated December 22, 2009 had participated as candidates in the 2004 and 2007 elections. If indeed they were not registered voters, they should have been disqualified then. Further, it was emphasized that the candidates who filed the Petition/Opposition were permanent residents and were domiciled at the place where they sought to be elected.

The COMELEC *en banc* denied the Petition/Opposition through the herein assailed Resolution dated May 6, 2010. The COMELEC declared that the Resolution dated December 22, 2009 was anchored on the certification, which was issued by Buagas and Acting Provincial Election Supervisor of Maguindanao, Estelita B. Orbase, stating that Ibrahim, among other candidates, were not registered voters of Datu Unsay, Maguindanao. The certification was issued in the performance of official duty, hence, the presumption of regularity attached to it in the absence of contrary evidence.

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<sup>7</sup> Id. at 28.

<sup>8</sup> Id. at 66-73.

Ibrahim and company failed to adduce evidence proving their allegations of registration and residence.

In the May 10, 2010 elections, during which time the Resolution dated May 6, 2010 had not yet attained finality, Ibrahim obtained 446 votes, the highest number cast for the Vice-Mayoralty race in Datu Unsay.<sup>9</sup> However, the Municipal Board of Canvassers (MBOC), which was then chaired by Buagas, suspended Ibrahim's proclamation on the basis of Section 5, Rule 25<sup>10</sup> of the COMELEC Rules of Procedure.<sup>11</sup>

### Issue

Whether or not the COMELEC *en banc* acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the Resolutions dated December 22, 2009 and May 6, 2010.

### Arguments in Support of the Instant Petition

Ibrahim posits that the MBOC is a ministerial body created merely "to take the returns as made from the different voting precincts, add them up and declare the result."<sup>12</sup> As long as the returns are on their face genuine and are signed by the proper officers, *sans* indications of being spurious and forged, they cannot be rejected on the ground of alleged questions on the qualifications of voters and the existence of electoral frauds and irregularities. Further, since Ibrahim received the highest number of votes for Vice-Mayor, all possible doubts should be resolved in favor of his

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<sup>9</sup> Please see City/Municipal Certificate of Canvass, id. at 102.

<sup>10</sup> Sec. 5. *Effect of Petition if Unresolved Before Completion of Canvass.* – If the petition, for reasons beyond the control of the Commission, cannot be decided before the completion of the canvass, the votes cast for the respondent may be included in the counting and in the canvassing; however, if the evidence of guilt is strong, his proclamation *shall* be suspended notwithstanding the fact that he received the winning number of votes in such election. (Italics ours)

<sup>11</sup> Please see Certificate of Canvass of Votes and Proclamation of Winning Candidates for Datu Unsay Mayor and Vice-Mayor, *rollo*, p. 101.

<sup>12</sup> Citing *Abdullah Sangki v. COMELEC, et al.*, 129 Phil. 666, 673 (1967).

eligibility, lest the will of the electorate, which should be the paramount consideration, be defeated.<sup>13</sup>

In its Manifestation and Motion in Lieu of Comment,<sup>14</sup> the Office of the Solicitor General (OSG) proposes for the instant Petition to be granted. The OSG points out that in *Cipriano v. Commission on Elections*,<sup>15</sup> this court nullified, for lack of proper proceedings before their issuance, the resolutions issued by the COMELEC relative to the cancellation of a certificate of candidacy. The OSG emphasizes that similarly, Ibrahim was disqualified as a candidate without prior notice and hearing and he was given the chance to file an opposition only after the issuance of the Resolution dated December 22, 2009.

Further citing *Bautista v. Comelec*,<sup>16</sup> the OSG argues that jurisdiction over petitions to cancel a certificate of candidacy pertains to the COMELEC sitting in division and not to the COMELEC *en banc*. The COMELEC *en banc* can only take cognizance of petitions to cancel a certificate of candidacy when the required number of votes for a division to reach a decision, ruling, order or resolution is not obtained, or when motions for reconsideration are filed to assail the said issuances of a division.

The OSG likewise refers to Section 4(B)(3)<sup>17</sup> of Resolution No. 8696<sup>18</sup> to stress that generally, the COMELEC cannot *motu proprio* file

<sup>13</sup> Citing *Sinaca v. Mula*, 373 Phil. 896 (1999).

<sup>14</sup> *Rollo*, pp. 115-138.

<sup>15</sup> 479 Phil. 677 (2004).

<sup>16</sup> 460 Phil. 459 (2003).

<sup>17</sup> B. PETITION TO DISQUALIFY A CANDIDATE PURSUANT TO SECTION 68 OF THE OMNIBUS ELECTION CODE AND PETITION TO DISQUALIFY FOR LACK OF QUALIFICATIONS OR POSSESSING SOME GROUNDS FOR DISQUALIFICATION

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3. The petition to disqualify a candidate for lack of qualification or possessing some grounds for disqualification, shall be filed in ten (10) legible copies, personally or through a duly authorized representative, *by any person* of voting age, *or duly registered political party, organization or coalition of political parties* on the ground that the candidate does not possess all the qualifications as provided by the Constitution or by existing law or who possesses some grounds for disqualification as provided for by the Constitution or by existing law.

x x x x (Italics ours)

<sup>18</sup> Rules on Disqualification Cases Filed in Connection with the May 10, 2010 Automated National and Local Elections, promulgated on November 11, 2010.

petitions for disqualification against candidates. Section 5<sup>19</sup> of the same resolution, however, provides the only exception to the foregoing, to wit, that certificates of candidacy of those running for the positions of President, Vice-President, Senator and Party-List maybe denied due course and canceled *motu proprio* by the COMELEC based on grounds enumerated therein. While there was a Petition for Disqualification<sup>20</sup> filed by Bai Reshal S. Ampatuan against Ibrahim and company, it was not the basis for the COMELEC *en banc*'s issuance of the Resolutions dated December 22, 2009 and May 6, 2010. Instead, the certification issued by Buagas was the basis for the subsequent actions of the Law Department and the COMELEC *en banc* leading to the issuance of the herein assailed resolutions.

The OSG also invokes Section 16<sup>21</sup> of COMELEC Resolution No. 8678<sup>22</sup> to assert that the MBOC had no authority to order the suspension of Ibrahim's proclamation. Upon motion, the suspension of a winning candidate's proclamation can be ordered during the pendency of a disqualification case before the COMELEC. However, only the COMELEC, as a tribunal, has the authority to issue orders relative to cases pending before it. The MBOC cannot substitute its own judgment for that of the COMELEC's. The MBOC can suspend a winning candidate's proclamation only when an actual issue within the Board's jurisdiction arises in the course of conducting a canvass. The aforementioned issues include the commission of violent and terrorist acts or the occurrence of a calamity at the canvassing site. Absent any determination of irregularity in the election returns, as well as an order enjoining the canvassing and proclamation of the winner, it is a

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<sup>19</sup> Sec. 5. *Motu Proprio* Cases. – The Commission may, at any time before the election, *motu proprio* refuse to give due course to or cancel any certificate of candidacy of any candidate for the positions of President, Vice-President, Senator and Party-List xxx.

<sup>20</sup> The petition, docketed as SPA No. 09-204 (DC), was dismissed through a resolution (id. at 91-96) issued on March 2, 2010 by the COMELEC's Second Division; *rollo*, pp. 30-34.

<sup>21</sup> Sec. 16. Effects of Disqualification. – Any candidate who has been declared disqualified by final judgment shall not be voted for and the votes cast in his favor shall not be counted. If, for any reason, he is not declared disqualified by final judgment before the election and he is voted for and receives the winning number of votes, the case shall continue and upon motion of the petitioner, complainant, or intervenor, the proclamation of such candidate *may be ordered suspended during the pendency of the said case* whenever the evidence is strong. (Italics ours)

<sup>22</sup> Guidelines on the Filing of Certificates of Candidacy and Nomination of Official Candidates of Registered Political Parties in Connection with the May 10, 2010 National and Local Elections, promulgated on October 6, 2009.

mandatory and ministerial duty of the MBOC concerned to count the votes based on such returns and declare the result.<sup>23</sup>

It is also the OSG's position that Section 5, Rule 25<sup>24</sup> of the COMELEC Rules of Procedure was irregularly worded for using the word "shall" when Section 6<sup>25</sup> of Republic Act (R.A.) No. 6646,<sup>26</sup> which the rules seek to implement, merely employed the word "may". The use of the word "may" indicates that the suspension of a proclamation is merely directory and permissive in nature and operates to confer discretion.<sup>27</sup>

### **The COMELEC's Contentions**

In the Compliance<sup>28</sup> filed with the court, the COMELEC assails as improper Ibrahim's immediate resort to the instant Petition for *Certiorari* under Rule 64 of the Rules of Court. Despite the issuance of the herein assailed resolutions, Ibrahim's name was not stricken off from the certified list of candidates during the May 10, 2010 elections and the votes cast for him were counted. Hence, no actual prejudice was caused upon him as the COMELEC did not even direct the MBOC to suspend his proclamation. It was the MBOC's ruling which resulted to the suspension of his proclamation. Such being the case, Ibrahim should have instead filed a pre-proclamation controversy before the COMELEC anchored on the supposed illegality of the MBOC's proceedings. Section 241 of Batas Pambansa Blg. 881 (BP 881), otherwise known as the Omnibus Election Code (OEC), defines pre-proclamation controversies as referring to any

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<sup>23</sup> Citing *Grego v. Commission on Elections*, 340 Phil. 591, 608 (1997).

<sup>24</sup> Supra note 10.

<sup>25</sup> Sec. 6. Effect of Disqualification Case. – Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry or protest and, upon motion of the complainant or any intervenor, *may* during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong. (Italics ours).

<sup>26</sup> An Act Introducing Additional Reforms in the Electoral System and for Other Purposes, effective January 5, 1988.

<sup>27</sup> Supra note 23, at 606; citation omitted.

<sup>28</sup> *Rollo*, pp. 146-158.

questions “pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission, or any matter raised xxx in relation to the preparation, transmission, receipt, custody and appreciation of the election returns.” Had Ibrahim instituted instead a pre-proclamation controversy, the COMELEC could have corrected the MBOC’s ruling, if indeed, it was erroneous.

The COMELEC further argues that Ibrahim was not denied due process as he and the other candidates referred to in the Resolutions dated December 22, 2009 and May 6, 2010 were given the opportunity to file their opposition. Ibrahim did file his Petition/Opposition and sought reliefs from the *COMELEC en banc*. Now, he should not be allowed to repudiate the proceedings merely because the result was adverse to him. Moreover, the OSG’s invocation of the doctrines enunciated in *Bautista v. Comelec*<sup>29</sup> is misplaced because in the said case, there was a total absence of notice and hearing.

The COMELEC emphasizes that Ibrahim was undeniably not a registered voter in Datu Unsay when he ran as Vice-Mayor in the May 10, 2010 elections. He cannot possess any mandate to serve as an elected official as by his act and willful misrepresentations, he had deceived the electorate.

### **Our Ruling**

#### **We grant the instant Petition.**

Before resolving the merits of the petition, the court shall first dispose of the procedural issue raised by the COMELEC.

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<sup>29</sup>

Supra note 16.



**Ibrahim properly resorted to the instant Petition filed under Rule 64 of the Rules of Court to assail the Resolutions dated December 22, 2009 and May 6, 2010 of the COMELEC *en banc*.**

The COMELEC seeks the dismissal of the instant Petition on the basis of a technical ground, to wit, that Ibrahim's resort to a petition for *certiorari* filed under Rule 64 of the Rules of Court to challenge the Resolutions dated December 22, 2009 and May 6, 2010 is improper. Ibrahim should have instead filed before the COMELEC a pre-proclamation controversy to allow the latter to correct the MBOC's ruling if it was indeed erroneous.

The claim fails to persuade.

Section 7, Article IX of the 1987 Constitution in part substantially provides that any decision, order or ruling of any of the Constitutional Commissions may be brought for review to the Supreme Court on *certiorari* within 30 days from receipt of a copy thereof. The orders, ruling and decisions rendered or issued by the COMELEC *en banc* must be final and made in the exercise of its adjudicatory or quasi-judicial power.<sup>30</sup> Further, Section 1, Rule 64 of the Rules of Court states that it shall govern the review of final judgments and orders or resolutions of the COMELEC and the Commission on Audit.

A pre-proclamation controversy is defined in Section 241 of the OEC as referring to "any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of parties before the board or directly with the Commission, or any matter raised under Sections 233,<sup>31</sup> 234,<sup>32</sup>

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<sup>30</sup> *Cayetano v. Commission on Elections*, G.R. No. 193846, April 12, 2011, 648 SCRA 561, 569.

<sup>31</sup> When the election returns are delayed, lost or destroyed

<sup>32</sup> Material defects in the election returns

235<sup>33</sup> and 236<sup>34</sup> in relation to the preparation, transmission, receipt, custody and appreciation of the election returns.” Section 243 of the OEC restrictively enumerates as follows the issues which can be raised in a pre-proclamation controversy:

- (a) Illegal composition or proceedings of the board of canvassers;
- (b) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235 and 236 of this Code;
- (c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and
- (d) When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.

The illegality of the proceedings of the board of canvassers is the first issue which may be raised in a pre-proclamation controversy. To illustrate, the proceedings are to be considered as illegal when the board is constituted not in accordance with law, or is composed of members not enumerated therein, or when business is transacted *sans* a quorum.

In the case at bar, the now assailed Resolutions dated December 22, 2009 and May 6, 2010 were issued with finality by the COMELEC *en banc*. Under the Constitution and the Rules of Court, the said resolutions can be reviewed by way of filing before us a petition for *certiorari*. Besides, the issues raised do not at all relate to alleged irregularities in the preparation, transmission, receipt, custody and appreciation of the election returns or to the composition and proceedings of the board of canvassers. What the instant Petition challenges is the authority of the MBOC to suspend Ibrahim’s proclamation and of the COMELEC *en banc* to issue the assailed resolutions. The crux of the instant Petition does not qualify as one which can be raised as a pre-proclamation controversy.

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<sup>33</sup> When election returns appear to be tampered with or falsified  
<sup>34</sup> Discrepancies in election returns

**The COMELEC *en banc* is devoid of authority to disqualify Ibrahim as a candidate for the position of Vice-Mayor of Datu Unsay.**

Section 3(C), Article IX of the 1987 Constitution explicitly provides:

Sec. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of *election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission en banc.* (Italics ours)

Further, the circumstances obtaining in *Bautista v. Comelec*<sup>35</sup> cited by the OSG in its Manifestation are similar to those attendant to the instant Petition. In *Bautista*, the election officer reported to the Law Department that Bautista was ineligible to run as a candidate by reason of his being an unregistered voter. The Law Department recommended to the COMELEC *en banc* to deny due course or cancel Bautista's certificate of candidacy. The COMELEC *en banc* adopted the recommendation and consequently issued a resolution. In the said case, this Court discussed the COMELEC *en banc*'s jurisdiction over petitions for disqualification, for denial of due course, or cancellation of certificates of candidacy in the following wise:

In *Garvida v. Sales, Jr.*, the Court held that *it is the COMELEC sitting in division and not the COMELEC en banc which has jurisdiction over petitions to cancel a certificate of candidacy.* The Court held:

The Omnibus Election Code, in Section 78, Article IX, governs the procedure to deny due course to or cancel a certificate of candidacy, viz:

*"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 any 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 filing of the certificate of candidacy and shall be decided,*

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<sup>35</sup>

Supra note 16.

after due notice and hearing, not later than fifteen days before election.”

*In relation thereto, Rule 23 of the COMELEC Rules of Procedure provides that a petition to deny due course to or cancel a certificate of candidacy for an elective office may be filed with the Law Department of the COMELEC on the ground that the candidate has made a false material representation in his certificate. The petition may be heard and evidence received by any official designated by the COMELEC after which the case shall be decided by the COMELEC itself.*

*Under the same Rules of Procedure, jurisdiction over a petition to cancel a certificate of candidacy lies with the COMELEC sitting in Division, not en banc. Cases before a Division may only be entertained by the COMELEC en banc when the required number of votes to reach a decision, resolution, order or ruling is not obtained in the Division. Moreover, only motions to reconsider decisions, resolutions, orders or rulings of the COMELEC in Division are resolved by the COMELEC en banc.*

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Under Section 3, Rule 23 of the 1993 COMELEC Rules of Procedure, a petition for the denial or cancellation of a certificate of candidacy must be heard summarily after due notice. *It is thus clear that cancellation proceedings involve the exercise of the quasi-judicial functions of the COMELEC which the COMELEC in division should first decide. More so in this case where the cancellation proceedings originated not from a petition but from a report of the election officer regarding the lack of qualification of the candidate in the barangay election. The COMELEC en banc cannot short cut the proceedings by acting on the case without a prior action by a division because it denies due process to the candidate.*<sup>36</sup> (Citation omitted and italics ours)

**In the case at bar, the COMELEC *en banc*, through the herein assailed resolutions, ordered Ibrahim’s disqualification even when no complaint or petition was filed against him yet.** Let it be stressed that if filed before the conduct of the elections, a petition to deny due course or cancel a certificate of candidacy under Section 78 of the OEC is the appropriate petition which should have been instituted against Ibrahim considering that his allegedly being an unregistered voter of Datu Unsay disqualified him from running as Vice-Mayor. His supposed misrepresentation as an eligible candidate was an act falling within the purview of Section 78 of the OEC. **Moreover, even if we were to assume that a proper petition had been filed, the COMELEC *en banc* still acted**

<sup>36</sup>

Id. at 474, 477.

with grave abuse of discretion when it took cognizance of a matter, which by both constitutional prescription and jurisprudential declaration, instead aptly pertains to one of its divisions.

**Ibrahim is not estopped from challenging the COMELEC *en banc*'s jurisdiction to issue the assailed resolutions.**

In *Republic v. Bantigue Point Development Corporation*,<sup>37</sup> we stated:

*The rule is settled that lack of jurisdiction over the subject matter may be raised at any stage of the proceedings. Jurisdiction over the subject matter is conferred only by the Constitution or the law. It cannot be acquired through a waiver or enlarged by the omission of the parties or conferred by the acquiescence of the court. Consequently, questions of jurisdiction may be cognizable even if raised for the first time on appeal.*

*The ruling of the Court of Appeals that "a party may be estopped from raising such [jurisdictional] question if he has actively taken part in the very proceeding which he questions, belatedly objecting to the court's jurisdiction in the event that the judgment or order subsequently rendered is adverse to him" is based on the doctrine of estoppel by laches. We are aware of that doctrine first enunciated by this Court in *Tijam v. Sibonghanoy*. In *Tijam*, the party-litigant actively participated in the proceedings before the lower court and filed pleadings therein. Only 15 years thereafter, and after receiving an adverse Decision on the merits from the appellate court, did the party-litigant question the lower court's jurisdiction. Considering the unique facts in that case, we held that estoppel by laches had already precluded the party-litigant from raising the question of lack of jurisdiction on appeal. In *Figueroa v. People*, we cautioned that *Tijam* must be construed as an exception to the general rule and applied only in the most exceptional cases whose factual milieu is similar to that in the latter case."<sup>38</sup> (Citations omitted and italics ours)*

As enunciated above, estoppel by laches can only be invoked in exceptional cases with factual circumstances similar to those in *Tijam*.<sup>39</sup> In the case now before us, the assailed resolutions were issued on December 22, 2009 and May 6, 2010. The instant Petition, which now raises, among others, the issue of the COMELEC *en banc*'s jurisdiction, was filed on June

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<sup>37</sup> G. R. No. 162322, March 14, 2012, 668 SCRA 158.

<sup>38</sup> Id. at 163-164.

<sup>39</sup> 131 Phil. 556 (1968).

3, 2010. With the prompt filing of the instant Petition, Ibrahim can hardly be considered as guilty of laches.

**Ibrahim was not denied due process.**

Interminably, we have declared that deprivation of due process cannot be successfully invoked where a party was given the chance to be heard on his motion for reconsideration.<sup>40</sup>

In the case before us, Ibrahim was afforded the chance to file an opposition to the assailed resolutions. Nonetheless, even if due process was substantially observed, the assailed resolutions remain null and void for want of authority on the part of the COMELEC *en banc* to take cognizance of a matter which should have instead been referred to one of its divisions.

**The MBOC has no authority to suspend Ibrahim's proclamation especially since the herein assailed resolutions, upon which the suspension was anchored, were issued by the COMELEC *en banc* outside the ambit of its jurisdiction.**

*Mastura v. COMELEC*<sup>41</sup> is emphatic that:

*(T)he board of canvassers is a ministerial body. It is enjoined by law to canvass all votes on election returns submitted to it in due form. It has been said, and properly, that its powers are limited generally to the mechanical or mathematical function of ascertaining and declaring the apparent result of the election by adding or compiling the votes cast for each candidate as shown on the face of the returns before them, and then declaring or certifying the result so ascertained. x x x.*<sup>42</sup> (Italics ours)

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<sup>40</sup> *Villarosa v. COMELEC*, 377 Phil. 497, 504 (1999); citation omitted.

<sup>41</sup> 349 Phil. 423 (1998).

<sup>42</sup> Id. at 430.

The simple purpose and duty of the canvassing board is to ascertain and declare the apparent result of the voting while all other questions are to be tried before the court or other tribunal for contesting elections or in *quo warranto* proceedings.<sup>43</sup>

In the case at bar, the MBOC *motu proprio* suspended Ibrahim's proclamation when the issue of the latter's eligibility is a matter which the board has no authority to resolve. Further, under Section 6<sup>44</sup> of R.A. 6646, the COMELEC and not the MBOC has the authority to order the suspension of a winning candidates's proclamation. Such suspension can only be ordered upon the motion of a complainant or intervenor relative to a case for disqualification, or a petition to deny due course or cancel a certificate of candidacy pending before the COMELEC, and only when the evidence of the winning candidate's guilt is strong. Besides, the COMELEC *en banc* itself could not have properly ordered Ibrahim's disqualification because in taking cognizance of the matter, it had already exceeded its jurisdiction.

**WHEREFORE, IN VIEW OF THE FOREGOING,** the instant petition is **GRANTED**. The December 22, 2009 and May 6, 2010 Resolutions issued by the COMELEC *en banc* is **ANNULLED and SET ASIDE**. Consequently, the suspension by the MBOC of Ibrahim's proclamation on the basis of the herein assailed resolutions is likewise **ANNULLED and SET ASIDE**. In the absence of a judgment, order or resolution relative to another action or petition finally disqualifying Ibrahim, denying due course or cancelling his certificate of candidacy, the MBOC of Datu Unsay is directed to convene within ten (10) days from receipt hereof and to proclaim Ibrahim as the duly-elected Vice-Mayor of the said municipality.

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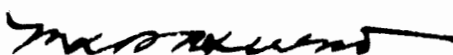
<sup>43</sup> Supra note 23, at 609, citing *Dizon v. Provincial Board of Canvassers of Laguna*, 52 Phil. 47 (1929).

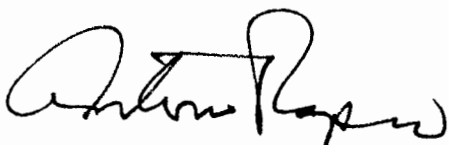
<sup>44</sup> Supra note 25.

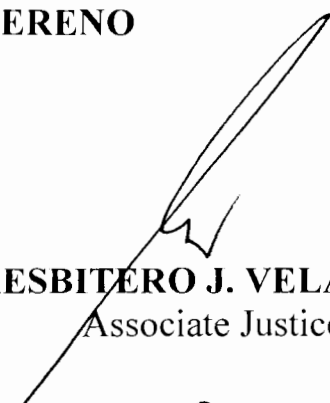
**SO ORDERED.**


  
**BIENVENIDO L. REYES**  
Associate Justice

**WE CONCUR:**


  
**MARIA LOURDES P.A. SERENO**  
Chief Justice

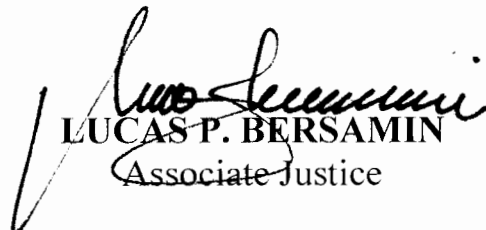
  
**ANTONIO T. CARPIO**  
Associate Justice

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice

  
**TERESITA J. LEONARDO DE CASTRO**  
Associate Justice


  
**ARTURO D. BRION**  
Associate Justice

  
**DIOSDADO M. PERALTA**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

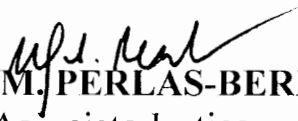
  
**ROBERTO A. ABAD**  
Associate Justice


  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice




  
**JOSE CATRAL MENDOZA**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

  
**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P.A. SERENO**  
Chief Justice