



Republic of the Philippines
Supreme Court
Manila

EN BANC

RENATO M. FEDERICO,

Petitioner,

G.R. No. 199612

Present:

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

- versus -

COMMISSION ON
ELECTIONS, COMELEC
EXECUTIVE DIRECTOR and
OSMUNDO M. MALIGAYA,

Respondents.

Promulgated:

JANUARY 22, 2013

X ----- X

DECISION

MENDOZA, *J.*:

This is a petition for certiorari under Rule 65, in relation to Rule 64, of the Rules of Court, assailing the December 21, 2011 Resolution¹ of the Commission on Elections (*Comelec*) *En Banc*, in SPC No. 10-082, entitled *In Re: Petition to Annul the Proclamation of Respondent Renato M.*

* On leave.

¹ Annex "A" of Petition, *rollo*, pp. 53-72.

Federico, Osmundo M. Maligaya v. Renato M. Federico and the Municipal Board of Canvassers of Santo Tomas, Batangas.

The Facts

Edna Sanchez (*Edna*) and private respondent Osmundo M. Maligaya (*Maligaya*) were candidates for the position of municipal mayor of Sto. Tomas, Batangas, in the May 10, 2010 Automated National and Local Elections. Maligaya was the Liberal Party's official mayoralty candidate.²

On April 27, 2010, Armando Sanchez, husband of Edna and the gubernatorial candidate for the province of Batangas, died. Two days later, or on April 29, 2010,³ Edna withdrew her Certificate of Candidacy (*COC*) for the position of mayor. She then filed a new *COC* and the corresponding Certificate of Nomination and Acceptance (*CONA*) for the position of governor as substitute candidate for her deceased husband.

On May 5, 2010, petitioner Renato M. Federico (*Federico*) filed with the Office of the Election Officer of Sto. Tomas, Batangas, his *COC*⁴ and *CONA*⁵ as official candidate of the Nationalista Party and as substitute candidate for mayor, in view of the withdrawal of Edna.

On May 7, 2010, the Comelec Law Department referred the Affidavit of Withdrawal, the *COC* and the *CONA* of Edna, as substitute candidate for her late husband, and those of Federico, as substitute candidate for her, to the Comelec *En Banc* for its consideration.⁶

On the same day, May 7, 2010, Maligaya filed his Petition to Deny Due Course and to Cancel Certificate of Candidacy⁷ of Federico before the Comelec, docketed as SPA No. 10-137 (DC). Maligaya sought to have Federico declared ineligible to run as substitute candidate for Edna because the period to file the *COC* for substitute candidates had already lapsed after December 14, 2009, pursuant to Section 13 of Comelec Resolution No. 8678.⁸

² *Rollo*, p. 8.

³ *Id.* at 125.

⁴ *Id.* at 100.

⁵ *Id.* at 101.

⁶ *Id.* at 8.

⁷ Annex "B" of Petition, *id.* at 83.

⁸ Guidelines on the Filing of Certificates of Candidacy and Nomination of Official Candidates or Registered Political Parties in Connection with the May 10, 2010 National and Local Elections.

In Resolution No. 8889,⁹ dated May 8, 2010, the COMELEC En Banc gave due course to the COC of Edna as substitute gubernatorial candidate in the Batangas province and to that of Federico as substitute mayoralty candidate in Sto. Tomas.

By that time, however, the official ballots had already been printed. Expectedly, on May 10, 2010, the day of elections, the name “SANCHEZ, Edna P.” was retained in the list of candidates for Mayor of Sto. Tomas, and garnered the highest number of votes - 28,389 against Maligaya’s 22,577 votes.¹⁰

On May 11, 2010, the Municipal Board of Canvassers (*MBOC*) printed the Certificate of Canvass of Votes and Proclamation of Winning Candidates¹¹ (*COCVP*) showing “SANCHEZ Edna P.” as the winning mayoralty candidate. The printed *COCVP*, reads:

WE, THE UNDERSIGNED MEMBERS of the CITY/MUNICIPAL BOARD OF CANVASSERS do hereby certify under oath that we have duly canvassed the votes cast in 81 precincts in the city/municipality for the Candidates therein for city/municipality offices in the elections held on May 10, 2010. Attached hereto and forming part hereof is a Statement of Votes by Precinct (CEF No. 20-A-1) obtained by each candidate for the offices of Mayor and Vice-Mayor.

That after such canvass, it appears that **SANCHEZ, Edna P. obtained 28389 votes** for the office of City/Municipality Mayor, the same being the highest number of votes legally cast for said office; and **SILVA, Armenius O. obtained 25532 votes** for the office of City/Municipality Vice Mayor, the same being the highest number of votes legally cast for said office.

ON THE BASIS OF THE FOREGOING, we hereby proclaim the above candidates as the duly elected City/Municipality Mayor and City/Municipality Vice Mayor.

IN WITNESS WHEREOF, we have signed these presents in SANTO TOMAS, Province of Batangas **this Tue May 11, 14:09:55 PHT 2010.**

[Emphases and underscoring supplied]

This action of MBOC prompted Maligaya to file his Petition to Annul Proclamation of Respondent Edna Sanchez,¹² docketed as SPC No. 10-022, on May 20, 2010. This petition was, however, later withdrawn, as agreed

⁹ Annex “C” of Petition, *rollo*, pp. 105-109.

¹⁰ *Rollo*, p. 127.

¹¹ *Id.* at 126.

¹² Annex “D” of Petition, *id.* at 110-122.

upon by the parties, and the case was dismissed by the Comelec First Division.¹³

A second print-out¹⁴ of the COCVP was issued by the MBOC bearing the *same time and date with the same number of votes* garnered by Edna being credited to Federico. The second print-out reads:

WE, THE UNDERSIGNED MEMBERS of the CITY/MUNICIPAL BOARD OF CANVASSERS do hereby certify under oath that we have duly canvassed the votes cast in 81 precincts in the city/municipality for the Candidates therein for city/municipality offices in the elections held on May 10, 2010. Attached hereto and forming part hereof is a Statement of Votes by Precinct (CEF No. 20-A-1) obtained by each candidate for the offices of Mayor and Vice-Mayor.

That after such canvass, it appears that **FEDERICO, Renato M. obtained 28389 votes** for the office of City/Municipality Mayor, the same being the highest number of votes legally cast for said office; and **SILVA, Armenius O. obtained 25532 votes** for the office of City/Municipality Vice Mayor, the same being the highest number of votes legally cast for said office.

ON THE BASIS OF THE FOREGOING, we hereby proclaim the above candidates as the duly elected City/Municipality Mayor and City/Municipality Vice Mayor.

IN WITNESS WHEREOF, we have signed these presents in SANTO TOMAS, Province of Batangas this **Tue May 11, 14:09:55 PHT 2010.**

[Emphases and underscoring supplied]

On June 1, 2010, upon learning of the proclamation of Federico as the winning mayoralty candidate by the MBOC, Maligaya filed his Petition to Annul Proclamation of Respondent Renato M. Federico¹⁵ as mayor of Sto. Tomas, Batangas, docketed as SPC No. 10-082. The petition was predicated on the alleged illegal act of the MBOC in issuing a falsified and patently antedated second COCVP in the name of Federico without reconvening, without due notice, and without annulling the first COCVP issued in favor of Edna.

In his answer to the petition, Federico raised, among others, the defenses that the petition was an erroneous remedy, having no basis under the rules; that it was not based on valid grounds; and that it should not have been given due course as it was belatedly filed.¹⁶

¹³ *Rollo*, p. 130.

¹⁴ *Id.* at 158.

¹⁵ Annex "G" of Petition, *id.* at 137-150.

¹⁶ *Rollo*, p. 162.

The members of the MBOC likewise filed an answer, claiming good faith when they proclaimed Federico as winner considering that the substitutions of Edna and Federico were valid under Comelec Resolution No. 8889.¹⁷

Meanwhile, Maligaya's petition to deny due course and to cancel the COC of Federico was denied by the Comelec Second Division in its Resolution,¹⁸ dated October 19, 2010. It gave due course to Federico's COC and CONA on the basis of the Comelec En Banc's Resolution No. 8889 which upheld Federico's substitution.

In its Resolution,¹⁹ dated June 21, 2011, the Comelec First Division denied Maligaya's petition to annul the proclamation of Federico for having been filed out of time, as it was filed beyond the ten (10) day period from the day of proclamation as provided for under Section 6, Rule 4 of Comelec Resolution 8804.²⁰ Further, it held that Federico's filing of candidacy for mayor, vice Edna, was valid.

Maligaya then filed his Verified Partial Motion for Reconsideration,²¹ dated June 27, 2011, insisting that his petition had not yet prescribed and that Federico's substitution was null and void with his COC and CONA filed after December 14, 2009, the deadline provided for under Section 13 of Comelec Resolution No. 8678. He further claimed that the generation of a second print-out of the COCVP bearing the same time and date with the same number of votes garnered by Edna being credited to Federico was questionable for it was impossible for Federico to be proclaimed as the winning candidate because the Canvassing and Consolidating System (CCS) had already printed a COCVP with the name of Edna, as the winner.

The said partial motion for reconsideration was elevated to the Comelec *En Banc* for proper disposition.

In his Comment²² on Maligaya's partial motion for reconsideration, Federico pointed out that his substitution of Edna had already been upheld with finality and, thus, could no longer be questioned. He prayed for the dismissal of the case.

In the hearing of August 25, 2011, the Comelec *En Banc* considered the case submitted for resolution.

¹⁷ Id. at 163.

¹⁸ Annex "F," id. at 131-136.

¹⁹ Annex "H" of Petition, id. at 160-171.

²⁰ In Re: Comelec Rules of Procedure on Disputes in an Automated Election System in Connection with the May 10, 2010 Elections.

²¹ Annex "I" of Petition, *rollo*, pp. 172-193.

²² Annex "J" of Petition, id. at 195-213.

On August 31, 2011, Federico filed a motion for reconsideration²³ of the Comelec *En Banc*'s Order given in the August 25, 2011 hearing, claiming that the case was barred by forum shopping and *litis pendentia*. Pending his motion, he elevated the matter to the Supreme Court on September 9, 2011 by way of a Petition for Certiorari and Prohibition, docketed as G.R. No. 198283. This petition was subsequently dismissed by the Court on October 4, 2011 for being premature in view of the pendency of the partial motion for reconsideration before the Comelec *En Banc*.²⁴

On December 21, 2011, the Comelec *En Banc* issued the assailed Resolution granting Maligaya's partial motion for reconsideration. Thus:

WHEREFORE, in view of the foregoing, the instant Partial Motion for Reconsideration is **GRANTED**. The proclamation of respondent Federico is hereby **ANNULLED**. Accordingly:

1. The Executive Director is ordered to constitute a Special Municipal Board of Canvassers for the municipality of Sto. Tomas, Batangas;
2. The Special Municipal Board of Canvassers is ordered to immediately notify the parties, reconvene and proclaim petitioner OSMUNDO M. MALIGAYA as the duly elected Mayor of Sto. Tomas, Batangas; and
3. The Law Department is directed to conduct an investigation on the members of the (Old) Municipal Board of Canvassers of Sto. Tomas, Batangas for possible violation of Section 32 pars. (c) and (f) Article VI of COMELEC Resolution No. 8809.

Let the Executive Director implement this resolution.

SO ORDERED.²⁵

The Comelec *En Banc* ruled that the petition for the annulment of Federico's proclamation filed on June 1, 2011 was within the prescribed ten (10) day period. It explained that the period for the filing of the said petition should be reckoned from May 27, 2011, when Maligaya discovered the existence of the second COCVP and not on May 11, 2011, the proclamation date. The Comelec *En Banc* was of the view that the annulment of Federico's proclamation was in order because of his invalid substitution of Edna, as his substitute COC was filed beyond the deadline and due to the illegality of the proceedings of the MBOC in generating the second COCVP without authority from the Comelec and without notice to the parties, in violation of Comelec Resolution No. 8804.

²³ Annex "K" of Petition, id. at 215-231.

²⁴ *Rollo*, pp. 58-59.

²⁵ Id. at 71-72.

Hence, Federico filed the present Petition for Certiorari with Prayer for Writ of Preliminary Injunction and/or Temporary Restraining Order, dated December 23, 2011, before this Court anchored on the following

GROUND

(I)

The validity of Petitioner's substitution as mayoralty candidate is already a settled fact.

- A. Petitioner validly substituted Edna Sanchez pursuant to Section 77 of the Omnibus Election Code.**
- B. The validity of Petitioner's substitution was already decided with finality by the Comelec.**
- C. Resolution No. 8889 is valid. The Comelec, in issuing Resolution No. 8889, passed upon all matters and issues laid before it in the case. Moreover, after Resolution No. 8889 was issued, it was in force and had to be complied with.**

(II)

The proclamation of Petitioner was regular and done in accordance with law.

- A. The votes cast for "SANCHEZ, Edna P." were legally considered votes for Petitioner.**
- B. The petition to annul Petitioner's proclamation was filed out of time.**

(III)

Private Respondent cannot validly be proclaimed as elected mayor because he was the losing candidate.²⁶

In the meantime, on December 29, 2011, the Comelec *En Banc* issued Minute Resolution No. 11-1306 constituting the special MBOC pursuant to its December 21, 2011 Resolution.²⁷

²⁶ Id. at 19-20.

²⁷ Id. at 349.

On January 16, 2012, the Comelec *En Banc* issued a Writ of Execution ordering Federico to vacate the position as mayor and to cease and desist from performing the functions of the said office.²⁸

On January 17, 2012, the Special MBOC issued a notice to convene on January 24, 2012 at the Comelec's Session Hall for the purpose of proclaiming Maligaya as the duly elected mayor.²⁹

In its Resolution, dated January 17, 2012, the Court required the respondents in this case to comment on Federico's petition for certiorari within ten (10) days from notice, to which Maligaya and the Comelec complied. In the same Resolution, the Court issued a Temporary Restraining Order (*TRO*) enjoining the Comelec from constituting and reconvening the Special MBOC and from proclaiming Maligaya as mayor of Sto. Tomas, Batangas.³⁰

Pending resolution of the case, on February 28, 2012, Vice-Mayor Armenius Silva (*Intervenor Silva*) of Sto. Tomas, Batangas, filed his Motion for Leave to Intervene,³¹ praying essentially that as Federico failed to qualify, he should be adjudged as his legal successor as mayor, under Section 44 of the Local Government Code³² (*LGC*).

Both the Office of the Solicitor General (*OSG*) and Maligaya opposed the motion to intervene, both arguing that he (Maligaya) was the only mayoralty candidate left to be voted for given the withdrawal of Edna and Federico's invalid substitution. Maligaya, then, was not a second placer but the sole and only placer in the elections. Hence, the doctrine of the second-placer would not apply to him.

The Issues

From the pleadings of the parties, the principal issues presented for resolution are: (1) whether Federico could validly substitute Edna who withdrew her candidacy for the mayoralty position; (2) whether Maligaya's Petition to Annul Proclamation of Federico as mayor of Sto. Tomas, Batangas, docketed as SPC No. 10-082, was filed on time; and (3) granting that Federico was disqualified, whether he should be succeeded by Intervenor Silva under the LGC or replaced by Maligaya.

²⁸ Id.

²⁹ Id. at 375.

³⁰ Id. at 246-249.

³¹ Id. at 378-382.

³² Republic Act No. 7160; An Act Providing for a Local Government Code of 1991.

Essentially, the issue thrust upon the Court is whether the Comelec gravely abused its discretion when it annulled Federico's proclamation as the winning candidate on the ground that his substitution as mayoralty candidate was void.

Federico insists that his substitution of Edna was valid and had long been final in view of Comelec Resolution No. 8889. He likewise argues that his proclamation as mayor of Sto. Tomas, Batangas, was valid and regular and, hence, it must be upheld.

The Court's Ruling

The Court agrees with the position taken by the OSG representing public respondent Comelec *En Banc*. The electoral commission committed no grave abuse of discretion when it came out with its December 21, 2011 Resolution,³³ in SPC No. 10-082, granting Maligaya's partial motion for reconsideration. The Court shall discuss the issues in seriatim.

Federico's substitution of Edna Sanchez as mayoralty candidate was not valid

In its assailed December 21, 2011 Resolution, the Comelec *En Banc* annulled Federico's proclamation as mayor of Sto. Tomas, Batangas, on the ground that his substitution of Edna was invalid, the substitute COC and CONA having been filed after the December 14, 2009 deadline provided for under Section 13 of Comelec Resolution No. 8678.

Federico argues that Comelec Resolution No. 8678 cannot prevail over the provisions of Section 77 of *Batas Pambansa Bilang* 881, the Omnibus Election Code (*OEC*), prescribing the rules on substitution of an official candidate of a registered political party who dies, withdraws or is disqualified for any cause after the last day for the filing of his COC. The law provides:

Sec. 77. Candidates in case of death, disqualification or withdrawal of another. - If after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified. The substitute candidate nominated by the political party concerned may file his certificate of candidacy for the office affected in accordance with the preceding sections not later than mid-day of the day of the election. If the death,

³³ Annex "A" of Petition, *rollo*, pp. 53-72.

withdrawal or disqualification should occur between the day before the election and mid-day of election day, said certificate may be filed with any board of election inspectors in the political subdivision where he is a candidate, or, in the case of candidates to be voted for by the entire electorate of the country, with the Commission. (Emphasis supplied)

Federico posits that he timely filed his COC as it was not later than midday of the day of the election. He argues that the law makes no distinction between the different causes for substitution – death, disqualification or withdrawal. Regardless of the cause of substitution, the deadline for the filing of a substitute COC is “not later than mid-day of the election.” Accordingly, he asserts that he validly substituted Edna having filed his COC and CONA on May 5, 2010 or five (5) days before the elections and having complied with all the procedural requirements for a valid substitution.

Federico’s argument is not well-taken.

The Comelec is empowered by law to prescribe such rules so as to make efficacious and successful the conduct of the first national automated election.

On January 23, 2007, Congress enacted Republic Act (R.A.) No. 9369, *An Act Amending Republic Act No. 8436, Entitled ‘An Act Authorizing The Commission On Elections To Use An Automated Election System In The May 11, 1998 National Or Local Elections And In Subsequent National And Local Electoral Exercises,’ To Encourage Transparency, Credibility, Fairness And Accuracy Of Elections, Amending For The Purpose Batas Pambansa Blg. 881, As Amended, Republic Act No. 7166 And Other Related Elections Laws, Providing Funds Therefor And For Other Purposes.* Section 13 of said law partially provides:

SEC. 13. Section 11 of Republic Act No. 8436 is hereby amended to read as follows:

SEC.15. *Official Ballot.* - The Commission shall prescribe the format of the electronic display and/or the size and form of the official ballot, which shall contain the titles of the position to be filled and/or the proposition to be voted upon in an initiative, referendum or plebiscite. Where practicable, electronic displays must be constructed to present the names of all candidates for the same position in the same page or screen, otherwise, the electronic displays must be constructed to present the entire ballot to the voter, in a series of sequential pages, and to ensure that the voter sees all of the ballot options

on all pages before completing his or her vote and to allow the voter to review and change all ballot choices prior to completing and casting his or her ballot. Under each position to be filled, the names of candidates shall be arranged alphabetically by surname and uniformly indicated using the same type size. The maiden or married name shall be listed in the official ballot, as preferred by the female candidate. Under each proposition to be vote upon, the choices should be uniformly indicated using the same font and size.

A fixed space where the chairman of the board of election inspector shall affix her/her signature to authenticate the official ballot shall be provided.

For this purpose, the Commission shall set the deadline for the filing of certificate of candidacy/petition of registration/manifestation to participate in the election. Any person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy: *Provided*, That, unlawful acts or omissions applicable to a candidate shall effect only upon that start of the aforesaid campaign period: *Provided, finally*, That any person holding a public appointive office or position, including active members of the armed forces, and officers, and employees in government-owned or-controlled corporations, shall be considered *ipso facto* resigned from his/her office and must vacate the same at the start of the day of the filing of his/her certification of candidacy. (Emphasis supplied)

Under said provision, “the Comelec, which has the constitutional mandate to enforce and administer all laws and regulations relative to the conduct of an election,”³⁴ has been empowered to set the dates for certain pre-election proceedings. In the exercise of such constitutional and legislated power, especially to safeguard and improve on the Automated Election System (AES), Comelec came out with Resolution No. 8678.

As automated elections had been mandated by law, there was a need for the early printing of the ballots. So that all candidates would be accommodated in the ballots, the early filing of COCs was necessary. If there would be late filing and approval of COCs, the names of aspiring candidates would not be included in the ballot, the only document to be read by the Precinct Count Optical Scan (PCOS) machines.

³⁴ *Munder v. Comelec*, G.R. No. 194076, October 18, 2011, 659 SCRA 256, 263.

The Law, Rules and Regulations
on Substitution

With regard to substitutions, Congress and the Comelec came out with laws and rules addressing anticipated problems in such cases. Thus, under Section 12 of R.A. No. 9006, in order to obviate confusion, the name of the substitute candidate should, as much as possible, bear the same surname as that of the substituted candidate. Section 12 reads:

Section 12. *Substitution of Candidates.* – In case of valid substitutions after the official ballots have been printed, the votes cast for the substituted candidates shall be considered as stray votes but shall not invalidate the whole ballot. For this purpose, the official ballots shall provide spaces where the voters may write the name of the substitute candidates if they are voting for the latter: *Provided, however,* That if the substitute candidate of the same family name, this provision shall not apply. [Emphases supplied]

Regarding the May 10, 2010 automated elections, the Comelec came out with Resolution No. 8678. On substitution, Section 13 thereof provides:

SEC. 13. *Substitution of Candidates, in case of death, disqualification or withdrawal of another.* - If after the last day for the filing of certificate of candidacy, an official candidate of a registered political party dies, withdraws or is disqualified for any cause, he may be substituted by a candidate belonging to, and nominated by, the same political party. No substitute shall be allowed for any independent candidate.

The substitute for a candidate who withdrew may file his certificate of candidacy as herein provided for the office affected not later than December 14, 2009.

The substitute for a candidate who died or suffered permanent incapacity or disqualified by final judgment, may file his certificate of candidacy up to mid-day of election day. If the death or permanent disability should occur between the day before the election and mid-day of election day, the substitute candidate may file the certificate with any board of election inspectors in the political subdivision where he is a candidate, or in the case of a candidate for President, Vice-President or Senator, with the Law Department of the Commission on Elections in Manila.

No person who has withdrawn his candidacy for a position shall be eligible as substitute candidate for any other position after the deadline for filing of certificates of candidacy. [Emphasis and underscoring supplied]

As correctly pointed out by the OSG, it is clear from the foregoing that different deadlines were set to govern the specific circumstances that would necessitate the substitution of a candidate due to death, disqualification or withdrawal. In case of death or disqualification, the substitute had until midday of the election day to file the COC. In case of withdrawal, which is the situation at bench, the substitute should have filed a COC by December 14, 2009.

The reason for the distinction can easily be divined. Unlike death or disqualification, withdrawal is voluntary. Generally, a candidate has sufficient time to ponder on his candidacy and to withdraw while the printing has not yet started. If a candidate withdraws after the printing, the name of the substitute candidate can no longer be accommodated in the ballot and a vote for the substitute will just be wasted.

When Batangas Governor Armando Sanchez died on April 27, 2010, Edna withdrew her candidacy as mayor and substituted her late husband as gubernatorial candidate for the province on April 29, 2010. The party actually had the option to substitute another candidate for Governor aside from Edna. By fielding Edna as their substitute candidate for Governor, the party knew that she had to withdraw her candidacy for Mayor. Considering that the deadline for substitution in case of withdrawal had already lapsed, no person could substitute her as mayoralty candidate. The sudden death of then Governor Armando Sanchez and the substitution by his widow in the gubernatorial race could not justify a belated substitution in the mayoralty race.

Comelec Resolution No. 8889
not binding on Maligaya

Federico asserts that Resolution No. 8889, which gave due course to the COC of Edna, as gubernatorial candidate; and his COC, as mayoralty candidate, was valid as the Comelec passed upon all matters and issues laid before it in the case. According to him, the legal presumption was that official duty had been regularly performed. The resolution was an operative fact by which the Comelec denied Maligaya's petition to deny due course to the COC of Federico, and on the basis of which the MBOC counted the votes for Edna as votes cast for Federico.

As far as Maligaya is concerned, the resolution was void as it lacked legal basis as Federico's substitution was invalid, his COC having been filed only on May 5, 2010, or after December 14, 2009, the deadline provided for under Section 13 of Comelec Resolution No. 8678. No reason was mentioned in the resolution why his COC was given due course except that

the withdrawal “merely caused a vacuum in mayoralty contest.”³⁵ The resolution reads:

Mrs. Edna P. Sanchez is qualified to substitute for her deceased husband. And this substitution is not contrary to law or our rules. She is stepping up from her candidacy as Mayor to Governor, and such action merely caused a vacuum in mayoralty contest. The rule being cited by the Law Department that the substitute for a candidate who withdrew may file his certificate of candidacy as herein provided for the office affected not later than December 14, 2009, is far from germane considering that the vacancy arose by reason of the death of Governor Sanchez.

To stress, the vacancy in the mayoralty race in Sto. Tomas, Batangas, was due to the withdrawal of Edna as mayoralty candidate, not due to the death of Armando Sanchez.

Accordingly, the Court agrees with the OSG that Resolution No. 8889 was void as it was in contravention of the guidelines set forth under Resolution No. 8678. With respect to Federico, it cannot be regarded as a valid source of any right, like the right to be voted for public office. Indeed, a void judgment can never be final and executory and may be assailed at any time.³⁶

“Where a proclamation is null and void, the proclamation is no proclamation at all and the proclaimed candidate's assumption of office cannot deprive the Comelec of the power to declare such nullity and annul the proclamation.”³⁷

More importantly, Resolution No. 8889 was merely an administrative issuance, based on documents forwarded to the Comelec. It was not a result of an adversarial proceeding, where the parties were heard and allowed to adduce evidence. In issuing Resolution No. 8889, the Comelec did not bother to notify the parties who would have been affected. It was, thus, not a decision in an actual case or controversy which ripened into finality.

Unquestionably, parties who had no participation therein were not bound by the resolution. Federico cannot invoke *res judicata*, one of the requirements of which is identity of parties. Stated differently, as Maligaya was not a party in the said proceeding, Resolution No. 8889 was not binding on him.

³⁵ *Rollo*, p. 109.

³⁶ *Ga, Jr. v. Tubungan*, G.R. No. 182185, September 18, 2009, 600 SCRA 739, 748.

³⁷ *Duremdes v. Comelec*, 258-A Phil. 532, 545 (1989).

**The second COCVP in favor of
Federico had no legal basis.**

Without question, the votes garnered by Edna could not be credited to Federico as he was never a legitimate candidate. As there was an invalid substitution, there could not be a valid proclamation. In effect, the second COCVP in his name had no legal basis. Granting that those who voted for Edna had in mind to vote for Federico, nonetheless, the fact that there was no compliance with the rules cannot be ignored.

x x x. In a choice between provisions on material qualifications of elected officials, on the one hand, and the will of the electorate in any given locality, on the other, we believe and so hold that we cannot choose the electorate will. The balance must always tilt in favor of upholding and enforcing the law. To rule otherwise is to slowly gnaw at the rule of law.³⁸

It was alleged that the MBOC of Sto. Tomas, Batangas, raised the hands of Federico as the winner. As correctly pointed out by Maligaya, however, this was impossible because the CCS printed the name of Edna Sanchez as the winner on the first COCVP. Thereafter, the MBOC came out with a second COCVP, this time, with the name of Federico on it with the same number of votes as that of Edna, and generated on the very same date and the very same time as the first COCVP - a physical impossibility.

**Maligaya's Petition to Annul
the Proclamation of Federico
was filed on time**

Maligaya became aware of the issuance of the second COCVP in favor of Federico only on May 27, 2010. From that day, he had ten (10) days to question the dubious proceeding in the MBOC under Section 6 of Resolution No. 8804. Considering that Maligaya filed his petition to annul Federico's May 10, 2010 proclamation on June 1, 2010, it was indeed filed on time.

It has been argued that there is no evidence that Maligaya became aware of the issuance of the second COCVP in favor of Federico only on May 27, 2010. In this regard, the Court believes that the actions taken by Maligaya after the elections and the separate proclamations of Edna and Federico strongly indicate that he was telling the truth. Indeed, there is no rhyme or reason why he should file a petition questioning the proclamation of Edna if he had knowledge of the subsequent proclamation of Federico. The Court adopts with approbation his reasoning on the matter. Thus:

³⁸ *Velasco v. Comelec*, G.R. No. 180051, December 24, 2008, 575 SCRA 590, 615.

5.35. Private respondent pursued and prosecuted this case with the knowledge that it was Edna Sanchez who was proclaimed, until he came to know of the alleged proclamation of respondent Federico on May 27, 2010. Consequently, he filed another petition on June 1, 2010, this time against Federico, to annul his proclamation. The June 1, 2010 petition was filed within ten days from the knowledge of the alleged proclamation of Federico.

5.36. The filing of SPC NO. 10-022 demonstrates that private respondent Maligaya believed in good faith that it was Edna Sanchez that was proclaimed and that he did not initially know that there was a COCVP in the name of Federico. SPC No. 10-022 is also a proof that petitioner did not dilly dally in protecting his rights. There simply is no reason and it runs counter to human conduct for Maligaya to file a petition for annulment of proclamation of Edna Sanchez if he knew all along that it was Federico who was proclaimed.

5.37. In the same manner, the filing of the present petition against Federico shows that the proclamation of Federico was fraudulent or at least made surreptitiously. Had Maligaya known of the proclamation of Federico, he should have outrightly filed the petition for annulment of proclamation against Federico. But because it was made without any notice to the herein private respondent, he only knew of it on May 27, 2010, thus, the petition on June 1, 2010. Private respondent did not certainly sleep on his rights as he filed the proper petition within the prescribed period. He could not be penalized for belated filing when, as shown above, the COCVP of Federico was surreptitiously accomplished. **Thus, the Comelec En Banc did not commit grave abuse of discretion in upholding the interest of herein private respondent Maligaya.**³⁹ [Emphasis and underscoring in the original]

Accordingly, the Comelec did not abuse its discretion when it annulled the actions of the MBOC and the proclamation of Federico. Such exercise is within its powers under the law to administer and enforce election laws.

x x x, [T]he statutory power of supervision and control by the COMELEC over the boards of canvassers includes the power to revise or reverse the action of the boards, as well as to do what the boards should have done. Such power includes the authority to initiate *motu proprio* such steps or actions as may be required pursuant to law, like reviewing the actions of the board; conducting an inquiry affecting the genuineness of election returns beyond the election records of the polling places involved; annulling canvass or proclamations based on incomplete returns or on incorrect or tampered returns; invalidating a canvass or proclamation made in an unauthorized meeting of the board of canvassers either because it lacked a quorum or because the board did not meet at all; requiring the board to convene.⁴⁰

³⁹ *Rollo*, pp. 291-292

⁴⁰ *Flauta, Jr. v. Comelec*, G.R. No. 184586, July 22, 2009, 593 SCRA 504, 514.

**There being no valid substitution,
the candidate with the highest number
of votes should be proclaimed as the
duly elected mayor**

As Federico's substitution was not valid, there was only one qualified candidate in the mayoralty race in Sto. Tomas, Batangas – Maligaya. Being the only candidate, he received the highest number of votes. Accordingly, he should be proclaimed as the duly elected mayor in the May 10, 2010 elections.⁴¹

Considering that Maligaya was the winner, the position of Intervenor Silva that he be considered the legal successor of Federico, whom he claims failed to qualify, has no legal basis. There is simply no vacancy. When there is no vacancy, the rule on succession under Section 44⁴² of the LGC cannot be invoked.

WHEREFORE, the petition is **DENIED.**

The Motion for Leave to Intervene filed by Armenius Silva is **DENIED.**

The Temporary Restraining Order issued by the Court is ordered lifted.

SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

⁴¹ See *Aratea v. Commission on Elections*, G.R. No. 195229, October 9, 2012 and *Jalosjos, Jr. v. Commission on Elections*, G.R. Nos. 193237 and 193536, October 9, 2012.

⁴² **CHAPTER II**



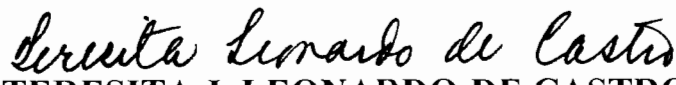
Vacancies and Succession

Section 44. *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor.* - If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice-governor, mayor, or vice-mayor, the highest ranking sanggunian member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the governor, vice-governor, mayor or vice-mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein.

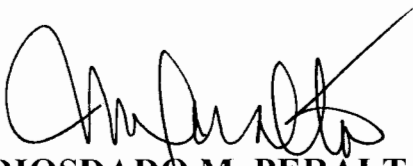
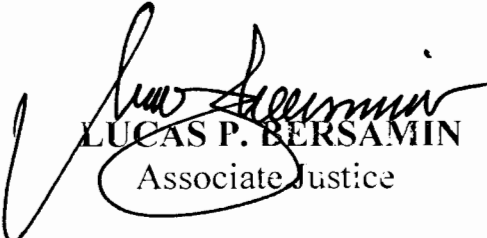
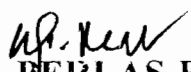
x x x x

For purposes of this Chapter, a **permanent vacancy arises** when an elective local official fills a higher vacant office, refuses to assume office, **fails to qualify**, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.

x x x x (Emphases supplied)

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

(On Leave)
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
BIENVENIDO L. REYES
Associate Justice
ESTELA M. PERLAS-BERNABE
Associate Justice
MARVIC MARCO VICTOR F. LEONEN
Associate Justice

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, I hereby 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.



MARIA LOURDES P. A. SERENO
Chief Justice