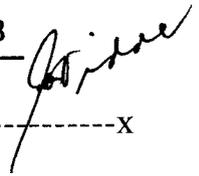


G.R. No. 205033 – ROMEO G. JALOSJOS, *Petitioner*, versus THE COMMISSION ON ELECTIONS, MARIA ISABELLE G. CLIMACOSALAZAR, ROEL B. NATIVIDAD, ARTURO N. ONRUBIA, AHMAD NARZAD K. SAMPANG, JOSE L. LOBREGAT, ADELANTE ZAMBOANGA PARTY, and ELBERT C. ATILANO, *Respondents*.

Promulgated:

JUNE 18, 2013



x-----x

SEPARATE OPINION

BRION, J.:

I **CONCUR** with the ruling that the Certificate of Candidacy (*CoC*) of petitioner Romeo G. Jalosjos should be cancelled for his failure to comply with the *voter registration requirement* in light of the Regional Trial Court's (*RTC's*) final judgment denying Jalosjos' inclusion as a voter. To the extent that the *RTC's* basis for its denial was the perpetual absolute disqualification of Jalosjos arising from the *reclusion perpetua* imposed on him, I also agree that the Commission on Elections (*Comelec en banc*)'s ruling cannot legally be faulted.

I make a reservation, however, on the latter ground to the extent that the perpetual absolute disqualification is *motu proprio* cited by the *Comelec en banc* in the *exercise of its administrative power* and as an *independent ground* for the cancellation it ordered. From this perspective, I take the position that the perpetual absolute disqualification is an improper ground whose proper place and role is the basis for disqualification, not for the cancellation of a *CoC*, and one that cannot be made *motu proprio*.

A candidate who has filed an otherwise valid *CoC* may, for example, put up as a defense that he or she has been granted an absolute pardon that erased the accessory penalties attached to his offense and its penalty (as in the recent case of former President Joseph Ejercito Estrada). This example glaringly shows that a perpetual absolute disqualification involves a question of fact that requires the full application of due process and cannot, *motu proprio* and in the exercise of administrative powers, be simply cited as a ground for the cancellation of a *CoC*.

The Court should also note that in a cancellation of a *CoC* situation, time is usually of the essence because a candidate cannot be assured of a timely remedy and would simply be out of the ballot if no opportune remedial measure



is applied. Thus, the Comelec cannot be overhasty in exercising its administrative powers and in *motu proprio* citing factual grounds. (The RTC decision in the present case was a different matter since it directly involved the right to vote in the then immediately coming election and related as well to a cited CoC.)

Additionally, there are conceptual points of distinctions between the cancellation of a CoC and the disqualification of a candidate that I had occasion to discuss in my Dissent in another *Jalosjos* case – *Dominador G. Jalosjos, Jr. v. Commission on Elections*.¹ In that case, I held the view that conviction of a crime involving moral turpitude under Section 12 of the Omnibus Election Code and Section 40 of the Local Government Code is a **distinct ground for disqualification that is not directly and per se a ground for the cancellation of a CoC**. (In this sense, the ground cited by the Comelec *en banc*, if cited independently of the RTC decision, would not be an appropriate basis for the cancellation of *Jalosjos*' CoC.) As I explained it in this Dissent:

To disqualify, in its simplest sense, is (1) to deprive a person of a power, right or privilege; or (2) to make him or her ineligible for further competition because of violation of the rules. It is in these senses that the term is understood in our election laws.

Thus, anyone who may qualify or may have qualified under the general rules of eligibility applicable to all citizens (Section 74 of the OEC) may be **deprived of the right to be a candidate or may lose the right to be a candidate** (if he has filed his CoC) because of a **trait or characteristic** that applies to him or an act that can be imputed to him as an individual, **separately from the general qualifications that must exist for a citizen to run for a local public office**.

In a disqualification situation, the grounds are the individual traits or conditions of, or the individual acts of disqualification committed by, a candidate as provided under Sections 68 and 12 of the OEC and Section 40 of LGC 1991, and which generally have nothing to do with the eligibility requirements for the filing of a CoC.

Sections 68 and 12 of the OEC (together with Section 40 of LGC 1991, outlined below) cover the following as **traits, characteristics or acts of disqualification**: (i) corrupting voters or election officials; (ii) committing acts of terrorism to enhance candidacy; (iii) overspending; (iv) soliciting, receiving or making prohibited contributions; (v) campaigning outside the campaign period; (vi) removal, destruction or defacement of lawful election propaganda; (vii) committing prohibited forms of election propaganda; (viii) violating rules and regulations on election propaganda through mass media; (ix) coercion of subordinates; (x) threats, intimidation, terrorism, use of fraudulent device or other forms of coercion; (xi) unlawful electioneering; (xii) release, disbursement or expenditure of public funds; (xiii) solicitation of votes or undertaking any propaganda on the day of the election; (xiv) declaration as an insane; and (xv) committing subversion, insurrection,

¹ G.R. Nos. 193237 and 193536, October 9, 2012, 683 SCRA 1.

rebellion or any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude.

Section 40 of LGC 1991, on the other hand, essentially repeats those already in the OEC under the following disqualifications:

- 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;
- b. Those removed from office as a result of an administrative case;
- c. Those convicted by final judgment for violating the oath of allegiance to the Republic;
- d. Those with dual citizenship;
- e. Fugitives from justice in criminal or non-political cases here or abroad;
- f. Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and
- g. The insane or feeble-minded.

Together, these provisions embody the disqualifications that, by statute, can be imputed against a candidate or a local elected official to deny him of the chance to run for office or of the chance to serve if he has been elected.

A unique feature of "disqualification" is that under **Section 68** of the OEC, it **refers only to a "candidate,"** not to one who is not yet a candidate. Thus, the grounds for disqualification do not apply to a would-be candidate who is still at the point of filing his CoC. **This is the reason why no representation is required in the CoC that the would-be candidate does not possess any ground for disqualification.** The time to hold a person accountable for the grounds for disqualification is after attaining the status of a candidate, with the filing of the CoC.

To sum up and reiterate the essential differences between the eligibility requirements and disqualifications, the former are the requirements that apply to, and must be complied by, all citizens who wish to run for local elective office; these must be positively asserted in the CoC. The latter refer to individual traits, conditions or acts applicable to specific individuals that serve as grounds against one who has qualified as a candidate to lose this status or privilege; essentially, they have nothing to do with a candidate's CoC.

When the law allows the cancellation of a candidate's CoC, the law considers the cancellation from the point of view of those positive requirements that every citizen who wishes to run for office must commonly satisfy. Since the elements of "eligibility" are common, the vice

of ineligibility attaches to and **affects both the candidate and his CoC**. In contrast, when the law allows the **disqualification of a candidate, the law looks only at the disqualifying trait or condition specific to the individual**; if the "eligibility" requirements have been satisfied, the disqualification applies only to the person of the candidate, leaving the CoC valid. A previous conviction of subversion is the best example as it applies not to the citizenry at large, but only to the convicted individuals; a convict may have a valid CoC upon satisfying the eligibility requirements under Section 74 of the OEC, but shall nevertheless be disqualified.² (emphases ours; citations omitted)

These distinctions, to be sure, are not idle ones in light of the above-mentioned time limitations involved in an election situation. There, too, is the reality, as pointed out above, that a party whose CoC is denied or is cancelled would not be considered a candidate; on the other hand, one who filed a valid CoC but who is subsequently disqualified (*e.g.*, for unlawful electioneering under Sections 68 and 12 of the Omnibus Election Code) was a candidate but was not allowed to be voted for or, after elections, would not be allowed to serve if he would win. Directly relevant to this distinction is Section 77 of the Omnibus Election Code which allows the substitution of disqualified candidates as has been extensively discussed by Mr. Justice Lucas P. Bersamin in the recent case of *Talaga v. Commission on Elections*.³

Subject to the above reservation, I fully concur with the majority.


ARTURO D. BRION
Associate Justice

² Id. at 41.

³ G.R. Nos. 196804 and 197015, October 9, 2012, 683 SCRA 197.