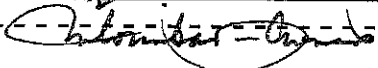


EN BANC

G.R. No. 258456 (Formerly UDK 17252) – GIORGIDI B. AGGABAO* and AMELITA S. NAVARRO,** *petitioners, versus* COMMISSION ON ELECTIONS *EN BANC* and LAW DEPARTMENT, *respondents*.

Promulgated:

July 26, 2022

X----------X

SEPARATE CONCURRING OPINION

CAGUIOA, J.:

The *ponencia* resolves to partly grant the instant Petition for *Certiorari*¹ (Petition) thereby nullifying the assailed Commission on Elections (COMELEC) issuances² but declaring moot the prayer to admit the Certificate of Candidacy (CoC) of petitioner Giorgidi B. Aggabao (Aggabao) as a substitute candidate for Mayor of Santiago City, Isabela in view of the conclusion of the May 9, 2022 National and Local Elections.³

Per the *ponencia*'s narration of facts, the COMELEC received two (2) Certificates of Nomination and Acceptance (CONAs) from the Partido para sa Demokratikong Reporma (Partido Reporma) issued in favor of petitioner Amelita Navarro (Navarro) and a certain Christopher G. Ayson⁴ (Ayson), respectively, who were both running for Mayor of Santiago City. In view of the multiple nominations made by the Partido Reporma, Navarro and Ayson were declared as independent candidates, pursuant to Section 15⁵ of COMELEC Resolution (Com Res) No. 10717.⁶ As such, when Navarro withdrew her CoC for the position of Mayor and Aggabao filed his CoC as Navarro's substitute, the COMELEC denied due course to Aggabao's CoC in

* Also Giorgidi Buza Aggabao in some parts of the *rollo*.

** Also Amelita Sison Navarro in some parts of the *rollo*.

¹ *Rollo*, pp. 12-37.

² *Ponencia*, pp. 1-2. These issuances are: (a) Document No. 21-3973 dated November 10, 2021, declaring Navarro as an independent candidate; (b) Document No. 21-7467 dated December 22, 2021, denying Aggabao's CoC as substitute candidate for Navarro; and (c) Document No. 22-0176 dated January 5, 2022, denying Aggabao's motion for reconsideration.

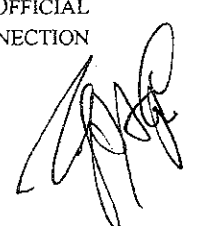
³ *Id.* at 20.

⁴ Also Christian Gamboa Ison in some parts of the *rollo*.

⁵ SECTION 15. *Allowed Number of Nominations*. – x x x

If the [political parties] or [coalition of political parties] nominated more than the number of candidates required to be voted for in a particular elective position, all of the nominations shall be denied due course by the Commission, and the aspirants shall be declared **independent candidates**. (Emphasis in the original)

⁶ RULES AND REGULATIONS GOVERNING: 1) POLITICAL CONVENTIONS; 2) SUBMISSION OF NOMINEES OF GROUPS OR ORGANIZATIONS PARTICIPATING UNDER THE PARTY-LIST SYSTEM OF REPRESENTATION; AND 3) FILING OF CERTIFICATES OF CANDIDACY AND NOMINATION OF AND ACCEPTANCE BY OFFICIAL CANDIDATES OF REGISTERED POLITICAL PARTIES OR COALITIONS OF POLITICAL PARTIES IN CONNECTION WITH THE MAY 9, 2022 NATIONAL AND LOCAL ELECTIONS, August 18, 2021.



accordance with Section 40⁷ of the same Com Res which disallows substitution for independent candidates. Prior to the cancellation of Aggabao's CoC, Senator Panfilo Lacson (Sen. Lacson), the Chairman of Partido Reporma, sent letters dated November 6, 2021 and December 2, 2021, to the COMELEC disowning Ayson's CONA, maintaining that Navarro is the official candidate of Partido Reporma for Mayor of Santiago City, and stating that Ayson is not even a member of the party; hence, it was absurd for Partido Reporma to have issued a CONA in his favor. However, the COMELEC failed to act on these letters.⁸

Hence, the present Petition which charges respondents COMELEC *En Banc* and its Law Department with grave abuse of discretion in declaring Navarro as an independent candidate and in denying Aggabao's substitution of Navarro's candidacy as Mayor of Santiago City, Isabela.

On January 25, 2022, the Court issued a temporary restraining order (TRO) against the assailed COMELEC issuances.⁹ Nevertheless, the COMELEC, on February 16, 2022, reiterated that Navarro is an independent candidate. However, it later explained its defiance of the TRO in that as early as January 9, 2022, the preparatory activities with respect to the printing of the official ballots had begun; hence, the matter sought to be restrained had become *fait accompli*.¹⁰

The *ponencia*, in partly granting the instant Petition, ruled, among others, that: (1) while the COMELEC was correct in receiving the CoCs and CONAs of Navarro and Ayson upon finding that they were filed in due form pursuant to its ministerial duty, it committed grave abuse of discretion when it failed to act on the letters of Sen. Lacson which challenged the validity or authenticity of Ayson's CONA; (2) upon the emergence of a legal controversy on the CONAs requiring the COMELEC to look beyond its face, the COMELEC became duty-bound to perform its quasi-judicial functions, which mandated the requisites of notice and hearing; (3) the lack of hearing precludes the Court from resolving who between Ayson and Aggabao was the real official candidate of Partido Reporma as the Court is not a trier of facts; and (4) nevertheless, the assailed COMELEC issuances are nullified for non-compliance with the due process requirements.¹¹

I concur with the *ponencia*'s finding of grave abuse of discretion on the COMELEC's part and, thus, the disposition of the case. I write this Separate Concurring Opinion to stress that: (1) the COMELEC's exercise of its quasi-judicial powers requires the observance of notice and hearing upon the

⁷ SECTION 40. *Substitution of Aspirants/Official Candidates in Case of Death, Disqualification or Withdrawal of Another.*— x x x

No substitute shall be allowed for any independent candidate.

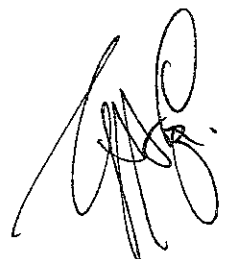
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⁸ *Ponencia*, pp. 2-6.

⁹ *Id.* at 8.

¹⁰ *Id.* at 10-11.

¹¹ *See id.* at 14-18.



concerned parties; (2) thus, in failing to accord the parties due process, it gravely abused its discretion when it completely ignored the letters of Sen. Lacson which gave rise to a legal controversy; (3) despite the seeming vacuum in its rules, the COMELEC should have referred the case for hearing to one of its divisions; and (4) the present case shows a need to enjoin political parties to be more circumspect in issuing CONAs.

When the COMELEC exercises its quasi-judicial powers, notice and hearing is necessary. There is an exercise of quasi-judicial powers when investigation and ascertainment of facts, as well as judgment and discretion, are crucial. Administrative powers, on the other hand, require merely an application of policies and enforcement of orders.

Pursuant to Section 3,¹² Article IX-C of the Constitution, the COMELEC need only hear and decide, first through its divisions, and then, upon motion for reconsideration, sitting as an *en banc*, when it is exercising its adjudicatory or quasi-judicial powers. It may act in either division or directly as an *en banc* when it is in the exercise of its administrative powers.¹³ Crucial, therefore, to the present controversy is the determination of the nature of the power exercised by the COMELEC when it issued the assailed resolutions.

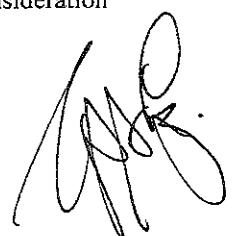
The case of *Bedol v. COMELEC*¹⁴ is instructive on the three (3) powers of the COMELEC:

The powers and functions of the COMELEC, conferred upon it by the 1987 Constitution and the Omnibus Election Code, may be classified into administrative, quasi-legislative, and quasi-judicial. **The quasi-judicial power of the COMELEC embraces the power to resolve controversies arising from the enforcement of election laws, and to be the sole judge of all pre-proclamation controversies; and of all contests relating to the elections, returns, and qualifications.** Its quasi-legislative power refers to the issuance of rules and regulations to implement the election laws and to exercise such legislative functions as may expressly be delegated to it by Congress. **Its administrative function refers to the enforcement and administration of election laws. In the exercise of such power, the Constitution (Section 6, Article IX-A) and the Omnibus Election Code (Section 52 [c]) authorize the COMELEC to issue rules**

¹² 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*.

¹³ See *Cipriano v. COMELEC*, 479 Phil. 677 (2004).

¹⁴ 621 Phil. 498 (2009).



and regulations to implement the provisions of the 1987 Constitution and the Omnibus Election Code.

The quasi-judicial or administrative adjudicatory power is the power to hear and determine questions of fact to which the legislative policy is to apply, and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. x x x¹⁵ (Emphasis and underscoring supplied)

In *Cipriano v. COMELEC*¹⁶ (*Cipriano*), the COMELEC *En Banc*, as recommended by its Law Department, disallowed the CoCs of therein petitioners as they were not registered voters. As in the present case, petitioners therein cried deprivation of their due process rights, with the COMELEC interposing the defense that its assailed resolutions were issued in the exercise of its administrative powers; hence, did not require notice and hearing. In ruling for petitioners, the Court elaborated on the distinction between the COMELEC's power to administer election laws and its quasi-judicial powers, *viz.*:

Contrary to the submission of the COMELEC, the denial of due course or cancellation of one's certificate of candidacy is not within the administrative powers of the Commission, but rather calls for the exercise of its quasi-judicial functions. **Administrative power is concerned with the work of applying policies and enforcing orders as determined by proper governmental organs. We have earlier enumerated the scope of the Commission's administrative functions. On the other hand, where a power rests in judgment or discretion, so that it is of judicial nature or character, but does not involve the exercise of functions of a judge, or is conferred upon an officer other than a judicial officer, it is deemed quasi-judicial.**¹⁷ (Emphasis supplied)

The Court in *Jalosjos v. COMELEC*,¹⁸ citing *Villarosa v. COMELEC*,¹⁹ pertinently ruled:

[T]he term 'administrative' connotes, or pertains, to **'administration, especially management, as by managing or conducting, directing or superintending, the execution, application, or conduct of persons or things.'** It does not entail an opportunity to be heard, the production and weighing of evidence, and a decision or resolution thereon. While a 'quasi-judicial function' is a term which applies to the action, discretion, etc., of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature. x x x²⁰ (Additional emphasis supplied; underscoring in the original)

¹⁵ Id. at 510. Citation omitted.

¹⁶ *Cipriano v. COMELEC*, supra note 13.

¹⁷ Id. at 690-691. Citations omitted.

¹⁸ 711 Phil. 414 (2013).

¹⁹ 377 Phil 497, 506-507 (1999).

²⁰ *Jalosjos v. COMELEC*, supra note 18, at 423-424.



From the foregoing, there is an exercise of quasi-judicial powers when investigation and ascertainment of facts, as well as judgment or discretion, are crucial. More specifically, when the body is required to ascertain facts to which the law shall apply so that discretion of judicial character is necessary, adjudicatory powers are in play. On the other hand, where what is involved is the mere application of policies and enforcement of orders as determined by proper governmental organs, there is a mere exercise of administrative powers. The latter does not entail the production and weighing of evidence, hence, an opportunity to be heard is not necessary.

The COMELEC, in the exercise of its administrative powers, properly applied its rules in receiving both Navarro's and Ayson's CONAs and declaring them independent candidates. However, it gravely abused its discretion in failing to accord notice and hearing to the parties when a legal controversy arose after Sen. Lacson sent his letters thereby requiring the COMELEC to exercise its quasi-judicial powers.

Under Section 76²¹ of Batas Pambansa Blg. 881,²² otherwise known as the "Omnibus Election Code of the Philippines" (OEC) and Section 32²³ of Com Res No. 10717, it is the *ministerial* duty of the COMELEC to receive and acknowledge receipt of the CoCs and CONAs filed before it, provided that these were filed in due form and in conformity with the rules and regulations, respectively. Conversely, the Court, in several occasions, has ruled that the COMELEC, may not, by itself, without the proper proceedings, deny due course to or cancel a CoC *filed in due form*.²⁴ In *Cipriano*, citing *Sanchez v. Del Rosario*,²⁵ the Court held that the duty of the COMELEC to give due course to a CoC filed in due form is ministerial in character and that while it may look into *patent defects* therein, it may not go into matters not appearing on its face.²⁶

In the present case, the COMELEC received the CoCs of both Navarro and Ayson, pursuant to its ministerial duty to receive and give due course to CoCs filed in due form. The CONAs attached to both CoCs, likewise being

²¹ SEC. 76. *Ministerial duty of receiving and acknowledging receipt.* — The Commission, provincial election supervisor, election registrar or officer designated by the Commission or the board of election inspectors under the succeeding section shall have the ministerial duty to receive and acknowledge receipt of the certificate of candidacy.

²² Approved on December 3, 1985.

²³ SECTION 32. *Ministerial Duty of Receiving and Acknowledging Receipt of Certificates of Candidacy/Nomination and Acceptance.* — The Receiving Officer has the ministerial duty to receive and acknowledge the receipt of the COC and CONA; **Provided that they are filed in conformity with the rules and regulations.** (Emphasis in the original)

²⁴ See *Luna v. COMELEC*, 550 Phil. 284, 292 (2007) and *Cipriano v. COMELEC*, supra note 13, at 689.

²⁵ 111 Phil. 733, 736-737 (1961).

²⁶ *Cipriano v. COMELEC*, supra note 13, at 689.

regular on their faces and compliant with the COMELEC rules, were likewise received and given due course, again, pursuant to the COMELEC's ministerial duty. Finally, there being two (2) CONAs issued by the same political party in favor of two (2) nominees for the same position, the COMELEC treated these nominees as independent candidates and disallowed both nominations, pursuant to Section 15 of Com Res No. 10717, which mandates that in case of such excessive nominations, "all of the nominations shall be denied due course by the Commission, and the aspirants shall be declared independent candidates."²⁷ To emphasize, these actions by the COMELEC were done pursuant to its administrative functions, there being no need to admit evidence, ascertain facts and render conclusions thereon.

Nevertheless, when Sen. Lacson sent letters to the COMELEC challenging the validity or authenticity of the CONA of Ayson issued by Partido Reporma, there arose a legal controversy which required the COMELEC to look beyond the face of the certificates. At this point, the COMELEC was already required to investigate, receive evidence and examine and weigh the same to arrive at factual conclusions to which the law shall apply. Specifically, it was called upon to ascertain whether Ayson's CONA was not authentic, as claimed by Sen. Lacson, so that Section 15 of Com Res No. 10717 on multiple nominations would be inapplicable, leaving Navarro as the lone nominee of Partido Reporma. If so found, then the substitution of Navarro by Aggabao should be valid under Section 40 of the same Com Res.

To stress, where only an application of the law is required without having to investigate and ascertain facts beyond the face of the certificates and other uncontroverted documents, administrative functions are exercised. This is thus involved when the COMELEC examines, upon filing of the CoC, the attached CONA, and ascertain, **on its face**, whether it was filed in due form and within the filing period, properly and completely filled-out, signed by the authorized signatories (by simple comparison of such signatures to those in the pertinent list submitted by the party to the COMELEC ahead of the filing of CoCs) and compliant with the requirements under the rules.²⁸ Once found that the CONA is filed in conformity with the rules and regulations, it becomes the ministerial duty of the COMELEC to receive and acknowledge receipt of the CONAs filed with them, in accordance with Section 76 of the OEC and Section 32 of Com Res No. 10717.

However, when there arises an issue or controversy with the certificates not appearing on their faces, such as when extrinsic evidence is offered to prove an allegedly fraudulent CONA, the COMELEC cannot merely ignore the same — as what it apparently did with respect to Sen. Lacson's letters — especially where, as in this case, such non-action inevitably led to the cancellation of the CoC of the substitute candidate, Aggabao.

²⁷ Emphasis omitted.

²⁸ See Sections 13 and 14 of COMELEC Resolution No. 10717.



The cancellation of a CoC on the ground of invalidity of the candidate's substitution requires notice and hearing.

On this note, the Court has held that both denial of due course to and cancellation of CoCs are adjudicatory proceedings which need to be first heard by the COMELEC division, as a matter of jurisdiction. The COMELEC *En Banc* can only act on the same upon a motion for reconsideration of its division's decision.²⁹

In *Luna v. COMELEC*,³⁰ the Court voided the COMELEC's disallowance of a substitution of an underaged candidate and the consequent cancellation of the CoC of his substitute. The Court even went further as to suggest that a petition to deny due course to or cancel the CoC of the *substituted* candidate was necessary because ineligibility of a candidate for non-age is beyond the usual and proper cognizance of the COMELEC outside of a petition under Section 78³¹ of the OEC, owing to its ministerial duty to give due course to CoCs filed *in due form*.

In *Cipriano*, the Court categorically held that the denial of due course or cancellation of a CoC "is not within the administrative powers of the [COMELEC], but rather calls for the exercise of its quasi-judicial functions."³² Hence, the Court annulled the COMELEC's Resolution, adopting the recommendation of its Law Department and cancelling or denying due course to CoCs of several candidates, including petitioners, for not being registered voters. It ruled that outside of patent defects, the COMELEC may only deny due course to or cancel a CoC in accordance with the procedure laid down in Section 78, which affords all parties notice and an opportunity to present evidence, albeit through a summary procedure.³³

In *Bautista v. COMELEC*,³⁴ the Court held that the COMELEC denied a candidate of his due process rights when its *en banc*, upon its Law Department's recommendation, cancelled the candidate's CoC for the latter's failure to register as a voter. The Court ruled that a division of the COMELEC should have first heard the case, so that the COMELEC *En Banc* acted without jurisdiction when it ordered such cancellation of the CoC.³⁵ The COMELEC contended that there was no need for presentation and evaluation of evidence

²⁹ See *Bautista v. COMELEC*, 460 Phil. 459, 475-476 (2003).

³⁰ *Supra* note 24.

³¹ SEC. 78 *Petition to deny due course to or cancel a certificate of candidacy.* — A verified petition seeking to deny due course to or cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein 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 the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

³² *Cipriano v. COMELEC*, *supra* note 13, at 690.

³³ See *id.* at 689-690.

³⁴ *Supra* note 29.

³⁵ *Id.* at 475.

because the issue of whether Bautista was a registered voter is easily resolved by looking at the COMELEC registrations records. The Court nevertheless ruled that such reasoning fails to consider instances where a voter may be excluded through inadvertence or registered with an erroneous or misspelled name. Indeed, a COMELEC rule allows candidates who are not registered voters to be included in the certified list of candidates until the COMELEC directs otherwise. The Court declared that the COMELEC should have observed the summary proceeding outlined in Rule 23³⁶ of its Rules of Procedures³⁷ in relation to petitions to deny due course to or cancel CoCs.³⁸

In *Engle v. COMELEC En Banc*³⁹ (*Engle*), while the Court ruled that the matter of validity of petitioner's substitution is not a proper subject of a Rule 78 petition to deny due course to or cancel a CoC as it does not relate to a qualification of the candidate, it nonetheless held that the denial of due course to the CoCs of both the substituted candidate and his substitute calls for the exercise of the COMELEC's quasi-judicial functions, and therefore, must first be heard and decided by the COMELEC's divisions, thus:

First, the COMELEC Law Department's "ruling" was issued only after the filing of petitioner's COC. Second, with respect to the denial of due course to James L. Engle's COC as a nominee of Lakas-CMD and to petitioner's COC as his substitute, the COMELEC Law Department's letter is not binding and at most, recommendatory. It is settled in jurisprudence that the denial of due course [to] or cancellation of one's COC is not within the administrative powers of the COMELEC, but rather calls for the exercise of its quasi-judicial functions. We have also previously held that the COMELEC, in the exercise of its adjudicatory or quasi-judicial powers, is mandated by the Constitution to hear and decide such cases first by Division and, upon motion for reconsideration, by the *En Banc*. In resolving cases to deny due course to or cancel certificates of candidacy, the COMELEC cannot merely rely on the recommendations of its Law Department but must conduct due proceedings through one of its divisions. Returning to the case at bar, the COMELEC Second Division only formally ruled on the status of James L. Engle as an independent candidate and the invalidity of petitioner's substitution on July 5, 2013, months after the May 13, 2013 Elections.⁴⁰

Hence, it appears that although *Engle* held against the propriety of a Section 78 petition to adjudicate the issue of validity of substitution because

³⁶ SECTION 1. *Grounds for Denial of Certificate of Candidacy.* — A petition to deny due course to or cancel a certificate of candidacy for any elective office may be filed with the Law Department of the Commission by any citizen of voting age or a duly registered political party, organization, or coalition or political parties on the exclusive ground that any material representation contained therein as required by law is false.

SECTION 2. *Period to File Petition.* — The petition must be filed within five (5) days following the last day for the filing of certificate of candidacy.

SECTION 3. *Summary Proceeding.* — The petition shall be heard summarily after due notice.

SECTION 4. *Delegation of Reception of Evidence.* — The Commission may designate any of its officials who are members of the Philippine Bar to hear the case and to receive evidence.

³⁷ COMELEC RULES OF PROCEDURE, approved on February 15, 1993.

³⁸ *Bautista v. COMELEC*, supra note 29, at 480.

³⁹ 778 Phil. 568 (2016).

⁴⁰ Id. at 583-584. Citations omitted.

the same does not relate to the qualifications of a candidate, it still held the stance that cancellation of CoC's on the ground of invalidity of substitution demands the exercise of quasi-judicial powers of the COMELEC, hence, must first be heard and decided by its division. *Engle* merely failed to specify the remedy therefor under the COMELEC Rules or any statute.

Nevertheless, the Court in *Tagolino v. House of Representatives Electoral Tribunal*⁴¹ (*Tagolino*), appears to have taken the position that an invalid substitution may be a ground to remove a winning candidate from office as the same still relates to the expanded meaning of "qualifications." *Tagolino* involved the cancellation of CoC of Richard Gomez (for non-compliance with the pertinent residency requirement) and the consequent removal from office in a *quo warranto* action of his substitute, his wife, Lucy Torres-Gomez (Lucy). The Court, through the masterful *ponencia* of Senior Associate Justice Estela Perlas-Bernabe (SAJ Bernabe), held that as a person whose CoC was denied due course or cancelled (*i.e.*, Richard Gomez) cannot be substituted, Lucy, the substitute, never became a *bona fide* candidate. *Tagolino* occasioned to define "qualifications" and the word "eligible" as used in Section 74⁴² of the OEC, thus:

Notably, the phrase "election, returns, and qualifications" should be interpreted in its totality as referring to all matters affecting the validity of the contestee's title. More particularly, the term "qualifications" refers to matters that could be raised in a *quo warranto* proceeding against the proclaimed winner, such as his disloyalty or ineligibility, or the inadequacy of his certificate of candidacy. As used in Section 74 of the OEC, the word "eligible" means having the right to run for elective public office, that is, having all the qualifications and none of the ineligibilities to run for the public office. In this relation, private respondent's own qualification to run for public office — which was inextricably linked to her husband's own qualifications due to her substitution — was the proper subject of *quo warranto* proceedings falling within the exclusive jurisdiction of the HRET and independent from any previous proceedings before the COMELEC, lest the jurisdictional divide between the two be blurred.⁴³

To stress, Section 74 lays down the contents of a CoC, one of which is a declaration that the candidate is eligible for the office sought. It appears that, proceeding from *Tagolino*, an invalid substitution may be the proper subject of a false material declaration under Section 78 of the OEC.

⁴¹ 706 Phil. 534 (2013).

⁴² SEC. 74. *Contents of certificate of candidacy.* — The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the *Batasang Pambansa*, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

x x x x

⁴³ *Tagolino v. House of Representatives Electoral Tribunal*, supra note 41, at 560-561. Citations omitted.

The COMELEC should have endorsed the matter to one of its divisions for hearing despite the seeming vacuum in its rules treating of a remedy to challenge its administrative allowance or disallowance of substitutions.

To recall, under the Constitution, the COMELEC must hear and decide election cases pursuant to its quasi-judicial powers sitting, first, as a division and then as an *en banc*, on motion for reconsideration. While there appears to be nothing in the COMELEC's rules expressly and categorically authorizing it to endorse a matter to its division for hearing and decision, the Court takes notice of several cases wherein the COMELEC *En Banc* referred a matter to its divisions for hearing.⁴⁴ In the present case, the COMELEC should have similarly referred the administrative matter to its division and docketed the same as an election case, heard the parties thereon and, only after such hearing, decided the case.

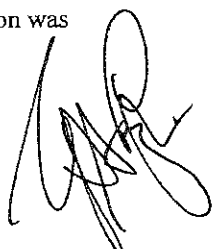
Further, the COMELEC's rules likewise appear devoid of any remedy to challenge its administrative allowance or disallowance of substitution or CONAs or its declaration of candidates as independent candidates pursuant to its rules. There is no explicit avenue to contest such actions, *i.e.*, where a party can file a petition and thereafter can present evidence. To recall, the remedy against an administrative action of the COMELEC, through the COMELEC *En Banc*, is a petition for *certiorari* with the Court alleging grave abuse of discretion.⁴⁵ However, the Court is generally not a trier of facts and does not receive and evaluate evidence. This is why Sen. Lacson, in disclaiming the CONA issued in Ayson's favor, merely wrote letters to the COMELEC. Again, upon receipt of the letters, the COMELEC should have docketed the matter as an election case with its division and then heard the parties thereon.

However, as it turned out, the COMELEC failed to act on the letters. Instead, it merely declared in Document No. 21-7467 that it maintains its position that Navarro was an independent candidate without any explanation why Aggabao and Sen. Lacson's allegations did not deserve any credence. At the risk of being repetitive, when COMELEC was confronted with Sen. Lacson's letters, there arose a controversy requiring the COMELEC to afford the parties notice and hearing. As the COMELEC failed in this, I agree therefore with the *ponencia* that it gravely abused its discretion in failing to observe the constitutional requirement of hearing and deciding election cases at the first instance with the COMELEC divisions.

Nevertheless, it must be stressed that while the COMELEC erred in ignoring altogether the letters of Sen. Lacson, it could not have likewise

⁴⁴ *E.g., Sunga v. COMELEC*, 351 Phil. 310, 324 (1998) wherein a letter-complaint for disqualification was referred by the COMELEC *En Banc* to its Second Division for hearing.

⁴⁵ See Rule 64 in relation to Rule 65 of the Rules of Court.



validly and properly dishonored Ayson's CONA on the basis solely of said letters. As mentioned, it was positively required to accord all the parties notice and hearing, especially in light of the following circumstances surrounding the letters:

First, Sen. Lacson's letters, quite intriguingly, did not specifically refute the genuineness of his signature on Ayson's CONA and are silent as to how Ayson may have obtained the same.

Second, the letters seek to avoid the CONA issued in favor of Ayson, who was neither heard by the COMELEC nor a party to the present case.

Third, to recall, Ayson's CONA, as found by the COMELEC Law Department and *En Banc*, was regular on its face, conformed with the prescribed form and bore the signature of Sen. Lacson as appearing on Partido Reporma's List of Authorized Signatories with Specimen Signatures submitted to the COMELEC. Further and, perhaps, more importantly, the CONA is notarized, hence, presumed regular.

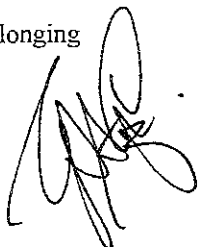
Fourth, the fact that Ayson is not a member of Partido Reporma, as alleged in Sen. Lacson's letters, lacks legal bearing on his alleged nomination because the OEC allows political parties to nominate guest candidates.⁴⁶ Neither is it irregular that Navarro's nomination was seemingly allowed by the COMELEC when she filed her CoC as Vice Mayor of Santiago City after withdrawing as a Mayoralty candidate. Unlike in the Mayoralty race where Ayson filed a CONA supposedly likewise issued by Partido Reporma, Navarro is indisputably the lone candidate nominated by the party in the Vice Mayoralty race (assuming she filed a CONA along with her CoC as Vice-Mayor). There is no occasion to apply Section 15 of Com Res No. 10717 in the latter.

Political parties are enjoined to be more circumspect in issuing CONAs.

It is well to point out that the present case does not appear to be unique or even rare. There seems to be a significant number of election cases involving the issue of multiple CONAs, appearing in due form and notarized, but issued to more than the maximum number of candidates prescribed in the rules, resulting in the treatment of all such candidates as independent pursuant to Section 15 of Com Res No. 10717.

It is, indeed, curious why the authorized signatory of a CONA, which appears regular and conforms with pertinent rules and regulations, cannot categorically refute the authenticity of his or her own signature thereon, although claiming the same to have been fraudulently issued. Perhaps, a

⁴⁶ SEC. 70. *Guest candidacy* -- A political party may nominate and/or support candidates not belonging to it.

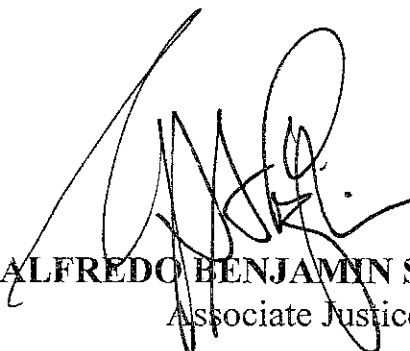


possibility is that such CONA likewise bears authentic signatures and was duly-issued.

One can imagine a large-sized political party such as a national party whose leadership from the national level understandably lacks familiarity with the political climate in every locality in the country. Perhaps because it is more practical, the leadership, who is likewise authorized to issue and sign CONAs, simply releases blank but duly-signed CONAs, to be filled-up by the parties' local chapters with the names of party nominees for local positions. However, a problem arises when both the national and local leaderships (by filling up the pro-forma and pre-signed CONAs) decide to nominate different candidates for the same positions, without duly communicating with each other. This now results in multiple CONAs, appearing in due form, bearing authentic signatures of the authorized signatory and duly-notarized, issued in favor of more than the maximum number of candidates allowed by law, consequently rendering all concerned candidates as independent. In other words, such problem arises when there is lack of communication and coordination within the political party.

Thus, as a parting note, the Court reminds political parties to be more circumspect in signing and issuing CONAs, as it is the State, and even the Court, that gets burdened with having to settle their internal controversies which could have been easily avoided with due coordination and communication among its members and officers. The preparations for, and conduct of, a national and local elections are gargantuan tasks which the COMELEC must undertake in the context of rapidly-moving timelines. Therefore, the same must not be hampered by party politics and blunders easily remediable by observing due diligence in the party's conduct of its business.

To conclude, I vote to **GRANT** the instant Petition for *Certiorari* as the COMELEC committed grave abuse of discretion in failing to accord the parties notice and hearing in exercising its quasi-judicial functions.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice