

EN BANC

G.R. Nos. 260219 & 260231 – DATU PAX ALI S. MANGUDADATU, Petitioner, v. THE COMMISSION ON ELECTIONS, SHARIFA AKEEL MANGUDADATU, AZEL V. MANGUDADATU, and BAI ALI A. UNTONG, Respondents.

Promulgated:

April 22, 2025

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CONCURRING AND DISSENTING OPINION

LEONEN, J.:

This case involves a Petition for *Certiorari* under Rule 64 in relation to Rule 65 asserting that the Commission on Elections *En Banc* gravely abused its discretion in cancelling the Certificate of Candidacy of Datu Pax Ali S. Mangudadatu (Pax Ali) for the May 2022 National and Local Elections.¹

On October 7, 2021, Pax Ali filed his Certificate of Candidacy for provincial governor of Sultan Kudarat. In his Certificate of Candidacy, he indicated that he is a resident of Sultan Kudarat and has been residing there since May 9, 2022, or for a period of one year and eight months. At the time, he was also the mayor of the Municipality of Datu Abdullah Sangki, Maguindanao.²

Within the same month, two petitions were filed with the Commission on Elections to deny due course or cancel Pax Ali's Certificate of Candidacy. The petitions maintain that Pax Ali misrepresented that he is a resident of Sultan Kudarat because he is still the mayor of Datu Abdullah Sangki, Maguindanao.³

On November 15, 2021, Pax Ali resigned as mayor of Datu Abdullah Sangki, Maguindanao.⁴

Pax Ali indicated this in his defense against the petitions to cancel his Certificate of Candidacy. He likewise explained that his domicile of origin is in Sultan Kudarat where he grew up with his family. He narrated that he

¹ Ponencia, p. 2.

² *Id.*

³ *Id.* at 2–3.

⁴ *Id.* at 4.

transferred his residence temporarily in Datu Abdullah Sangki, Maguindanao to comply with the residency requirement for the position of mayor, but he always intended to return to Sultan Kudarat. In July 2020, he started increasing his physical presence in Sultan Kudarat. By September 2020, all his personal effects and belongings have been transferred there, and in the next month, he was there daily, only leaving the area to attend to his work or official functions.⁵

In a January 18, 2022 Resolution, the First Division of the Commission on Elections canceled Pax Ali's Certificate of Candidacy, holding that he failed to comply with the residency requirement.⁶ The Commission on Elections *En Banc* affirmed this ruling.⁷

On May 5, 2022, Pax Ali filed a Petition for *Certiorari* before this Court. He likewise prayed for the issuance of a temporary restraining order or a status quo order, alleging that the ruling of the Commission on Elections will attain finality on May 7, 2022.⁸ On May 6, 2022, this Court issued a temporary restraining order, enjoining the implementation of the Commission on Elections ruling.⁹

On May 16, 2022, Pax Ali filed a manifestation stating he was proclaimed as the duly elected governor of the province of Sultan Kudarat by the Provincial Board of Canvassers.¹⁰

This case seeks to resolve whether the Commission on Elections gravely abused its discretion in cancelling Pax Ali's Certificate of Candidacy and finding that he misrepresented that he is a resident of Sultan Kudarat.

The *ponencia* dismissed Pax Ali's petition and affirmed the Commission on Elections cancellation of Pax Ali's Certificate of Candidacy.¹¹

It held that Pax Ali maintained his residency in Datu Abdullah Sangki, Maguindanao until he resigned as its mayor on November 15, 2021.¹² It ruled that his resignation as mayor is the only time it became clear that he is resolving to reside in Sultan Kudarat and is abandoning his residence in Datu Abdullah Sangki.¹³ His increased bodily or physical presence in Sultan Kudarat prior to the resignation is not sufficient.¹⁴ "Staying as Mayor of [Datu Abdullah Sangki] is a positive and voluntary act reflecting Pax Ali's choice

⁵ *Id.* at 3–4.

⁶ *Id.* at 5.

⁷ *Id.* at 6.

⁸ *Id.* at 7.

⁹ *Id.* at 8.

¹⁰ *Id.*

¹¹ *Id.* at 10.

¹² *Id.* at 12, 14.

¹³ *Id.* at 14.

¹⁴ *Id.* at 14, 15.

of residence. Remaining as the local chief executive of [Datu Abdullah Sangki] is antithetical to a claim of *animus non revertendi*.”¹⁵ The *ponencia* also found that his resignation is a mere afterthought, done only after two petitions for cancellation of his Certificate of Candidacy were already filed.¹⁶

As such, he failed to comply with the residency requirement to be a candidate for Provincial Governor of Sultan Kudarat. Since he resigned as mayor only on November 15, 2021, he can only be deemed to be a resident of Sultan Kudarat for a mere five months and 22 days prior to election day.¹⁷

The *ponencia* further held that Pax Ali deliberately misrepresented his compliance with the residency requirement.¹⁸ As the incumbent mayor of Datu Abdullah Sangki, Maguindanao, as required by the Local Government Code to be its resident for the duration of his tenure, he knew he was not a resident of Sultan Kudarat when he filed his Certificate of Candidacy.¹⁹ It noted that Pax Ali stated he belongs to a long line of public servants and, thus, it was impossible he was unaware of the residency requirement as mayor. His belated resignation did not erase his material misrepresentation.²⁰

The *ponencia* then ruled that the vice governor of Sultan Kudarat shall take the place of Pax Ali.²¹ Under Section 44 of the Local Government Code,²² it held that Pax Ali failed to qualify for the position of governor of Sultan Kudarat, creating a permanent vacancy in the office.²³

The *ponencia* points that Pax Ali’s case is an opportune time to revisit the second placer rule.²⁴ After painstakingly discussing the history of the doctrines of the rule on succession and the second placer rule,²⁵ it held that the latter has no basis in law, is inconsistent with the very essence of republicanism, and only creates conflicting decisions.²⁶

No law authorizes the proclamation of the second placer in the elections in case the candidate who received the most votes is disqualified or turned out

¹⁵ *Id.* at 15.

¹⁶ *Id.*

¹⁷ *Id.* at 16.

¹⁸ *Id.* at 19.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 34.

²² LOCAL GOV’T. CODE, sec. 44 provides:

SECTION 44. *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor.* — (a) **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. (Emphasis supplied)

²³ *Ponencia*, p. 34.

²⁴ *Id.* at 20.

²⁵ *Id.* at 23–31.

²⁶ *Id.* at 23, 28, 33.

to be ineligible. The second placer rule undermines the people's choice in every election and is repugnant to the people's constitutional right to suffrage. The Court cannot impose upon the electorate to accept as their representative, the candidate whom they did not choose in the elections.²⁷

It is the *ponencia*'s position thus that in all cases where the proclaimed electoral winner is later deemed unqualified or disqualified, it results to a permanent vacancy and the next highest ranking official should take their place.²⁸ This is regardless of whether it resulted from a petition to disqualify,²⁹ or a denial or cancellation of a Certificate of Candidacy,³⁰ or by *quo warranto*.³¹ The *ponencia* cites Section 211 of the Omnibus Election Code which provides that the intention of the election is to obtain the expression of the voter's will.³² As such, the person who obtained a plurality of votes should be declared the winner.³³ Thus, the second placer should not take the place of the first placer,³⁴ because the second placer is someone who lost the elections.³⁵

I concur that Pax Ali failed to comply with the residency requirement. However, I dissent from the majority's position that the rule on succession is applicable. I maintain that the second placer rule should still apply.

It is well-established that a person running for public office must not only be qualified for the position in all respects, they must also not be disqualified.³⁶ Missing one qualification or possessing one disqualification is sufficient to prevent a person from running for the position or from holding it.³⁷ A person's right to run for or to serve in an elective position may thus be questioned in several ways: (i) through a petition to deny due course or to cancel a certificate of candidacy under Section 78, in relation to Section 74 of the Omnibus Election Code; or (ii) through a petition for disqualification under Section 68 of the Omnibus Election Code; or (iii) through a petition for *quo warranto* under Section 253 of the Omnibus Election Code.³⁸

²⁷ *Id.* at 32.

²⁸ *Id.* at 33.

²⁹ OMNIBUS ELECTION CODE, secs. 12, 68; LOCAL GOV'T. CODE, sec. 40.

³⁰ OMNIBUS ELECTION CODE, sec. 78.

³¹ OMNIBUS ELECTION CODE, sec. 253.

³² *Ponencia*, p. 21.

³³ *Id.* at 23.

³⁴ *Id.* at 33.

³⁵ *Id.* at 29, 33.

³⁶ J. Leonen, Separate Opinion in *Buenafe v. Commission on Elections*, 924 Phil. 201, 309 (2022) [Per J. Zalameda, *En Banc*]. See also OMNIBUS ELECTION CODE, sec. 253:

SECTION 253. *Petition for quo warranto*. — Any voter contesting the election of any Member of the Batasang Pambansa, regional, provincial, or city officer on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall file a sworn petition for quo warranto with the Commission within ten days after the proclamation of the results of the election.

Any voter contesting the election of any municipal or barangay officer on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall file a sworn petition for quo warranto with the regional trial court or metropolitan or municipal trial court, respectively, within ten days after the proclamation of the results of the election.

³⁷ J. Leonen, Separate Opinion in *Buenafe v. Commission on Elections*, 924 Phil. 201, 311 (2022) [Per J. Zalameda, *En Banc*].

³⁸ *Id.* See also *Fermin v. COMELEC*, 595 Phil. 449, 469 (2008) [Per J. Nachura, *En Banc*].

Here, the case against Pax Ali stems from a petition to deny due course or to cancel a certificate of candidacy under Section 78 of the Omnibus Election Code, in relation to Section 39(a) of the Local Government Code. Section 78 of the Omnibus Election Code states:

SECTION 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 the 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 the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election. (Emphasis supplied)

Section 39(a) of the Local Government Code provides:

SECTION 39. *Qualifications.* — (a) An elective local official must be a citizen of the Philippines; a registered voter in the barangay, municipality, city, or province or, in the case of a member of the sangguniang panlalawigan, sangguniang panlungsod, or sangguniang bayan, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.

Based on these provisions, Pax Ali is unqualified to run as governor of Sultan Kudarat because of: (i) his failure to comply with the residency requirement; and (ii) his misrepresentation in his Certificate of Candidacy that he is so qualified. Nonetheless, Pax Ali garnered the most votes on election day and was proclaimed by the Provincial Board of Canvassers as the duly elected governor of Sultan Kudarat.³⁹

Clearly, Pax Ali cannot hold the position as governor of Sultan Kudarat. Thus, it is important to resolve who shall take his place.

To determine who shall take the place of a disqualified or ineligible candidate that has already been elected and proclaimed, I opine it is best to examine *when* they possessed their lack of qualification or disqualification. Candidates who have been unqualified from the beginning, even before filing for candidacy, ought to be distinguished from candidates who were initially qualified, but a subsequent act made the candidate unqualified or disqualified for the position.

An ineligible candidate, who is unqualified from the very beginning, should be treated as if they did not run for office, even if they were proclaimed

³⁹ Ponencia, p. 9.

as duly elected. The rationale for this is that the constitutional and statutory requirements for qualifications and disqualifications of candidates should not be overridden by the votes of the electorate. Otherwise, these constitutional and statutory limitations will be rendered meaningless. In *Maquiling v. Commission on Elections*.⁴⁰

The ballot cannot override the constitutional and statutory requirements for qualifications and disqualifications of candidates. When the law requires certain qualifications to be possessed or that certain disqualifications be not possessed by persons desiring to serve as elective public officials, those qualifications must be met before one even becomes a candidate. When a person who is not qualified is voted for and eventually garners the highest number of votes, even the will of the electorate expressed through the ballot cannot cure the defect in the qualifications of the candidate. To rule otherwise is to trample upon and rent asunder the very law that sets forth the qualifications and disqualifications of candidates. We might as well write off our election laws if the voice of the electorate is the sole determinant of who should be proclaimed worthy to occupy elective positions in our republic.

....

What will stop an otherwise disqualified individual from filing a seemingly valid COC, concealing any disqualification, and employing every strategy to delay any disqualification case filed against him so he can submit himself to the electorate and win, if winning the election will guarantee a disregard of constitutional and statutory provisions on qualifications and disqualifications of candidates?

It is imperative to safeguard the expression of the sovereign voice through the ballot by ensuring that its exercise respects the rule of law. To allow the sovereign voice spoken through the ballot to trump constitutional and statutory provisions on qualifications and disqualifications of candidates is not democracy or republicanism. It is electoral anarchy. When set rules are disregarded and only the electorate's voice spoken through the ballot is made to matter in the end, it precisely serves as an open invitation for electoral anarchy to set in.

....

As in any contest, elections are governed by rules that determine the qualifications and disqualifications of those who are allowed to participate as players. When there are participants who turn out to be ineligible, their victory is voided and the laurel is awarded to the next in rank who does not possess any of the disqualifications nor lacks any of the qualifications set in the rules to be eligible as candidates.⁴¹ (Citations omitted)

Thus, even if they garnered the most votes and were proclaimed as the winner, their lack of qualification is not cured. The invalidity of a candidacy is not converted to a valid one. In such cases, it is the proclamation that is the

⁴⁰ 709 Phil. 408 (2013) [Per C.J. Sereno, *En Banc*].

⁴¹ *Id.* at 444–448. See also *Chua v. Commission on Elections*, 783 Phil. 876, 900–901 (2016) [Per J. Leonen, *En Banc*].

nullity. Thus, despite a proclamation, *the position is deemed to never have been filled or occupied*. No person occupied the position. Necessarily, there is no resulting removal from the office or any vacancy arising from the nullification of the proclamation. To reiterate, the position was not occupied at all.

Considering these circumstances, it would thus be a leap of logic to apply Section 44 of the Local Government Code, which states:

SECTION 44. *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor.* — (a) *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.*

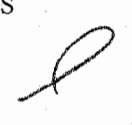
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For purposes of this Chapter, a *permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated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

For purposes of succession as provided in this Chapter, ranking in the sanggunian shall be determined on the basis of the proportion of votes obtained by each winning candidate to the total number of registered voters in each district in the immediately preceding local election. (Emphasis supplied)

Section 44 is clear that the person next highest in rank shall hold the office *in case of a permanent vacancy* to the position. It is also clear that a permanent vacancy occurs when the elective local official: (i) fills a higher vacant office, (ii) refuses to assume office, (iii) fails to qualify, (iv) dies, (v) is removed from office, (vi) voluntarily resigns, or (vii) is otherwise permanently incapacitated to discharge the functions of his office.

A commonality among these grounds is that the elective local official *initially qualified for and validly occupied the position*, but a later circumstance supervened. They were initially fit for the position, but a subsequent act occurred rendering them unable to hold the office, causing their removal from the position, and resulting in a permanent vacancy. This was explained in *Chua v. Commission on Elections*:⁴²



⁴² 783 Phil. 876 (2016) [Per J. Leonen, *En Banc*].

The permanent vacancies referred to in Section 45 are those arising “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.” In these situations, the vacancies were *caused by those whose certificates of candidacy were valid at the time of the filing “but subsequently had to be cancelled because of a violation of law that took place, or a legal impediment that took effect, after the filing of the certificate of candidacy.”*

The rule on succession under Section 45, however, would not apply if the permanent vacancy was caused by one whose certificate of candidacy was void *ab initio*. Specifically with respect to dual citizens, their certificates of candidacy are void *ab initio* because they possess “a substantive [disqualifying circumstance] . . . [existing] prior to the filing of their certificate of candidacy.” Legally, they should not even be considered candidates. The votes casted for them should be considered stray and should not be counted.

In cases of vacancies caused by those with void *ab initio* certificates of candidacy, the person legally entitled to the vacant position would be the candidate who garnered the next highest number of votes among those eligible. In this case, it is private respondent Bacani who is legally entitled to the position of Councilor, having garnered the sixth highest number of votes among the eligible candidates. The Commission on Elections correctly proclaimed private respondent Bacani in lieu of petitioner.⁴³ (Emphasis supplied, citations omitted)

Here, Pax Ali’s residence in Datu Abdullah Sangki, Maguindanao caused him to never initially qualify for the position. Thus, this is not a case where he was initially qualified, but later, after he filed his certificate of candidacy, he failed to qualify for the position. From the very beginning, his certificate of candidacy was void *ab initio* because he already possessed a disqualifying circumstance prior to its filing.

Necessarily, Section 44 is not the appropriate provision to determine who will take Pax Ali’s place. The rule on succession should not apply.⁴⁴ I disagree that Pax Ali should be replaced by the elected vice governor.⁴⁵

I maintain that the position should go to the duly elected candidate who: (i) is eligible for the position; and (ii) obtained the highest number of votes.⁴⁶ Where the candidate with the most votes was ineligible from the beginning, only the qualified candidates are considered for the position. The *qualified* eligible candidate who obtained the highest number of votes is the true winner.⁴⁷ This is why the position must necessarily go to the “second placer.” Though they obtained the second highest number of votes in relation to the unqualified or disqualified candidate, the second placer is more accurately

⁴³ *Id.* at 899–900.

⁴⁴ *Id.*

⁴⁵ *Ponencia*, p. 41.

⁴⁶ *Chua v. Commission on Elections*, 783 Phil. 876, 900 (2016) [Per J. Leonen, *En Banc*].

⁴⁷ *Id.*

described as the *first placer among the qualified candidates*. In *Maquiling v. Commission on Elections*.⁴⁸

Maquiling is not a second- placer as he obtained the highest number of votes from among the qualified candidates.

With Arnado's disqualification, Maquiling then becomes the winner in the election as he obtained the highest number of votes from among the qualified candidates.

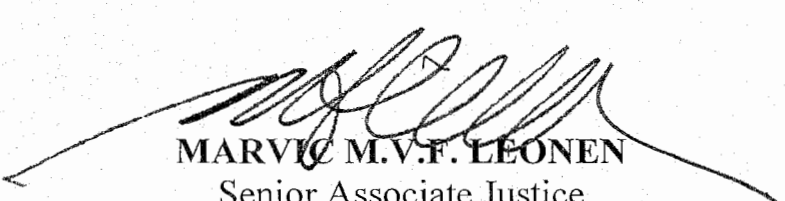
We have ruled in the recent cases of *Aratea v. COMELEC* and *Jalosjos v. COMELEC* that a void COC cannot produce any legal effect. Thus, the votes cast in favor of the ineligible candidate are not considered at all in determining the winner of an election.

Even when the votes for the ineligible candidate are disregarded, the will of the electorate is still respected, and even more so. The votes cast in favor of an ineligible candidate do not constitute the sole and total expression of the sovereign voice. The votes cast in favor of eligible and legitimate candidates form part of that voice and must also be respected.⁴⁹ (Citations omitted)

Furthermore, I agree with Associate Justice Jhosep Y. Lopez's position that applying the law of succession results in disregarding or setting aside the votes for the specific electoral position of governor in Sultan Kudarat. The Court must be mindful that the person who ran and won for vice governor was elected as vice governor, not governor. Thus, to keep the intent of the electorate, the legitimacy of the other votes cast in the election of governor should still be upheld.⁵⁰

In this respect, both the constitutional and statutory requirements for qualifications and disqualifications of candidates and the will of the people are accorded importance.

FOR THESE REASONS, I concur with the *ponencia* as to its finding that Datu Pax Ali S. Mangudadatu failed to comply with the residency requirement, but I dissent as to the application of the rule on succession. I vote to **DISMISS** the Petition for Review on *Certiorari*.



MARVIC M.V.F. LEONEN
Senior Associate Justice

⁴⁸ 709 Phil. 408 (2013) [Per C.J. Sereno, *En Banc*].

⁴⁹ *Id.* at 447.

⁵⁰ Reflections of J. J. Lopez, p. 16.