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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[G.R. No. 133840. November 13, 1998]

CIPRIANO "EFREN" BAUTISTA, *petitioner, vs.* **THE COMMISSION ON ELECTIONS, MUNICIPAL BOARD OF CANVASSERS OF NAVOTAS, METRO MANILA and MIGUELITA DEL ROSARIO,** *respondents.*

SYNOPSIS

Edwin "Efren" Bautista, petitioner Cipriano "Efren" Bautista, and respondent Miguelita Del Rosario were candidates in the May 11, 1998 for the position of Mayor of Navotas, Metro Manila. Edwin was, however, declared a nuisance candidate on April 30, 1998 by the COMELEC and his name was ordered excluded in the official list of candidates. The Comelec found that Edwin Bautista, a tricyle driver, has a known appellation of "Boboy" or "Boboy Tarugo" and not "Efren" and without financial means to support a campaign. He has no achievement or accomplishment in his 26 years of existence and does not own any real property. He moved for reconsideration. On the other hand, petitioner Cipriano Bautista is known also as "Efren" and a duly registered Naval Architect and Marine Engineer. He is a member of various civic organizations and held three local elective positions. On election day, Edwin's name was included in the certified list of candidates but was again stricken off later the same day. Petitioner's counsel earlier requested the Regional Election Director for a separate tally for the votes

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cast for "Efren Bautista," "Efren," "E. Bautista" and "Bautista." It was favorably acted upon and validated and/or affirmed by the then Comelec Chairman. Consequently, a separate tally was made. On May 13, COMELEC denied Edwin's motion for reconsideration. When the canvass of the election returns was commenced the Municipal Board of Canvassers of Navotas refused to canvass as part of the valid votes of petitioner the separate tallies of ballots on which written "Efren Bautista," "Efren," "E. Bautista" and "Bautista." Edwin Bautista got only 29 votes while petitioner received 17,981 votes and 12,034 Bautista votes in separate tallies not creditied to petitioner. Petitioner then filed with the Comelec a Petition to declare illegal the proceedings of the Municipal Board of Canvassers which was dismissed by the COMELEC. Hence, this present recourse. Meanwhile, Edwin filed a petition for *certiorari* challenging the actions of the COMELEC declaring him a nuisance candidate. The same was dismissed as well as his motion for reconsideration.

A nuisance candidate is one whose certificate of candidacy is presented and filed to cause confusion among the electorate by the similarity of names of the registered candidate or by other means which demonstrate that the candidate has no *bona fide* intention to run for public office.

It seems obvious that the votes separately tallied are not really stray votes but actually made by the will of the electorate determinable despite the apparent confusion caused by a potential nuisance candidate. Such votes could not have been intended for Edwin but to petitioner who had held various election positions of barangay captain, municipal councilor, vice-mayor of Navotas, Metro Manila. The COMELEC in its denial of Edwin's motion for reconsideration had declared that Edwin is a nuisance candidate, therefore, the votes cast for "Bautista," "Efren," "Efren Bautista and "E. Bautista" were votes cast for petitioner.

SYLLABUS

1. **POLITICAL LAW; ELECTIONS; COMELEC RULES OF PROCEDURE; SUMMARY RESOLUTION OF PRE-PROCLAMATION CONTROVERSIES; COMELEC MAY RELY ON PLEADINGS FILED BY PARTIES.** — Section 2

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of Rule 27, Part V, Comelec Rules of Procedure provides that all pre-proclamation controversies shall be heard summarily after due notice. Hence, the COMELEC only has to give notice to the parties by issuing summons and by serving a copy of the petition. The proceedings being summary, the COMELEC may rely on whatever pleading that may have been filed by the parties. A hearing wherein the parties engage in oral argument is not required.

2. **CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; FORMAL OR TRIAL TYPE HEARING, NOT ESSENTIAL IN ALL INSTANCES.** — In *Zaldivar vs. Sandiganbayan* (166 SCRA 316 [1988]), we held that the right to be heard does not only refer to the right to present verbal arguments in court. A party may also be heard through his pleadings. Where opportunity to be heard is accorded either through oral arguments or pleadings, there is no denial of procedural due process. As reiterated in *National Semiconductor (HK) Distribution, Ltd. vs. NLRC* (G. R. No. 123520, June 26, 1998), the essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side. Hence, in *Navarro III vs. Damaso* (246 SCRA 260 [1995]), we held that a formal or trial-type hearing is not at all times and not in all instances essential. Plainly, petitioner was not denied due process.

3. **POLITICAL LAW; ELECTIONS; NUISANCE CANDIDATE; CONSTRUED.** — A nuisance candidate is one whose certificate of candidacy is presented and filed to cause confusion among the electorate by the similarity of the names of the registered candidate or by other names which demonstrate that the candidate has no *bona fide* intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate. (*Fernandez vs. Fernandez,* 36 SCRA 1 [1970])

4. **ID.; ID.; ELECTION LAWS MUST GIVE EFFECT TO WILL OF VOTERS.** — It must be emphasized that the instant case involves a ground for disqualification which clearly affects the voters' will and causes confusion that frustrates the same. This is precisely what election laws are trying to protect. They give effect to, rather than frustrate, the will of the voter. Thus, extreme caution should be observed before any ballot is invalidated.

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Further, in the appreciation of ballots, doubts are resolved in favor of their validity. (*Silverio vs. Castro,* 19 SCRA 521 [1967]).

5. **ID.; ID.; OMNIBUS ELECTION CODE; CERTIFICATE OF CANDIDACY; GROUNDS FOR REFUSAL OR CANCELLATION.** — Section 69 of the Omnibus Election Code sets forth that the COMELEC may *motu proprio* or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if the following situations are extant: (1) if it is shown that said certificate has been filed to put the election process in mockery or disrepute; (2) or if said certificate was filed to cause confusion among the voters by the similarity of the names of the registered candidate; (3) or if there are other circumstances or acts which clearly demonstrate that the candidate has no *bona fide* intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate.

6. **ID.; ID.; ID.; ID.; ID.; CASE AT BAR.** — As discussed in the COMELEC's April 30, 1998 decision, in accordance with Section 69, Edwin Bautista was found to be a nuisance candidate. First and foremost, he was running under the name of Edwin "Efren" Bautista, when it had been established that he was really known as "Boboy" or "Boboy Tarugo." Second, the following circumstances saliently demonstrate that he had no *bona fide* intention of running for the office for which he filed his certificate of candidacy: He is said to be engaged in a "buy and sell" business, but has no license therefor. He declared that he had a monthly income of ₱10,000.00, but with expenses totalling ₱9,000.00. He does not own any real property. He did not file his income tax return for the years 1995 and 1996 and when asked why, he said he did not have any net income and that he was only earning enough to defray household expenses. He even violated COMELEC rules since he failed to submit the names of individuals who paid for his campaign materials as well as the printing press he dealt with. He did not have a political line-up and had no funds to support his campaign expenses. He merely depended on friends whose names he did not submit to the COMELEC. And as straightforwardly found by the COMELEC, he "has not demonstrated any accomplishment/achievement in his twenty-six (26) years of existence as a person that would surely attract

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the electorate to choose him as their representative in government." In contrast, it was shown that petitioner had previously held under his name Cipriano and appellation, "Efren" Bautista, various elective positions, namely: Barangay Captain of Navotas in 1962, Municipal Councilor of Navotas in 1970, and Vice-Mayor of Navotas in 1980. He is a duly registered Naval Architect and Marine Engineer, and a member of various civic organizations such as the Rotary Club of Navotas and the Philippine Jaycees. As early as May 13, 1998, the COMELEC had already spoken and stated its final position on the issue of whether or not Edwin Bautista is a nuisance candidate. It had already denied Edwin's motion for reconsideration in its May 13, 1998 Order. This important detail only shows that as of May 14, 1998, when Chairman Pardo issued the aforestated Memorandum, Edwin Bautista had already been finally declared as a nuisance candidate by the COMELEC. And when Edwin Bautista elevated the matter to this Court, we upheld such declaration.

7. **ID.; ID.; SEGREGATION OF VOTES FOR CANDIDATES VALIDATED BY COMELEC.** — It seems obvious to us that the votes separately tallied are not really stray votes. Then COMELEC Chairman Bernardo P. Pardo himself, now a respected member of the Court, in his May 14, 1998 Memorandum, allowed the segregation of the votes for "Bautista," "Efren Bautista," and "E. Bautista" into a separate improvised tally, for the purpose of later counting the votes. In fine, the COMELEC itself validated the separate tallies since they were meant to be used in the canvassing later on to the actual number of votes cast. These separate tallies actually made the will of the electorate determinable despite the apparent confusion caused by a potential nuisance candidate.

8. **ID.; ID.; STRAY VOTES; NOT INVALIDATED IN CASE AT BAR.** — A stray vote is invalidated because there is no way of determining the real intention of the voter. This is, however, not the situation in the case at bar. Significantly, it has also been established that by virtue of newspaper releases and other forms of notification, the voters were informed of the COMELEC's decision to declare Edwin Bautista a nuisance candidate. As we said earlier, the instant petition is laden with an issue which involves several ramifications. Matters tend to get complicated when technical rules are strictly applied. True

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it is, the disqualification of Edwin Bautista was not yet final on election day. However, it is also true that the electorate of Navotas was informed of such disqualification. The voters had constructive as well as actual knowledge of the action of the COMELEC delisting Edwin Bautista as a candidate for mayor. Technicalities should not be permitted to defeat the intention of the voter, especially so if that intention is discoverable from the ballot itself, as in this case.

APPEARANCES OF COUNSEL

Roque B. Bello for petitioner.

Marquinez, Pabalate & Associate Law Office collaborating counsel for petitioner.

Gancayco, Balasbas & Santos Law Offices for private respondent.

D E C I S I O N

MELO, *J.*:

Petitioner assails the order of the Commission on Elections dated May 28, 1998 which dismissed the petition he filed seeking to declare illegal the proceedings of the Municipal Board of Canvassers of Navotas for failing to include in the canvass the Bautista stray votes contained in a separate tally sheet.

Petitioner Cipriano "Efren" Bautista and private respondent were duly registered candidates for the position of Mayor of Navotas, Metro Manila in the elections of May 11, 1998. Aside from said candidates, a certain Edwin "Efren" Bautista, hereinafter referred to as Edwin Bautista, also filed a certificate of candidacy for the same position of mayor. His certificate of candidacy was filed at midnight on March 27, 1997, the last day for such filing. In fact, the filing was done at the very last minute.

On April 1, 1998, petitioner filed a petition praying that Edwin Bautista be declared a nuisance candidate. The COMELEC saw merit in the petition and in a resolution dated April 30, 1998, declared Edwin Bautista a nuisance candidate and consequently ordered the cancellation of his certificate of candidacy for the position of mayor.

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Accordingly, the name of Edwin Baustista was not included in the list of candidates for the position of mayor for Navotas. Copies of said list were distributed by the Office of the Election Officer of Navotas to the boards of election inspectors (BEI).

On May 8, 1998, Edwin Bautista filed a motion for reconsideration. As a result, on May 10, 1998, the Election Officer of Navotas issued a directive to the BEI to include the name of Edwin Bautista in the certified list of candidates. Conversely, on the afternoon of the same day, the Election Officer issued another directive to the BEI recalling his earlier directive for the inclusion of Edwin Bautista pending resolution of his motion for reconsideration.

In view of the conflicting directives, the Regional Election Director of the National Capital Region, responding to a request made by Atty. Gauttier T. Dupaya, counsel for petitioner, gave instructions to the BEI to tally separately either in some other portion of the same election return not intended for the tallying of votes for the candidates for mayor, or in separate sheet of paper, the votes for "EFREN BAUTISTA," "EFREN," "E. BAUTISTA" and "BAUTISTA." Said instructions were affirmed in a Memorandum of the then COMELEC Chairman, directing the BEI to "proceed with the counting of the votes for local officials excluding the votes cast for 'Bautista,' 'Efren' and 'Efren Bautista' as stray but to segregate such stray votes into a separate improvised tally sheet in order to count the total stray votes."

On May 13, 1998, the COMELEC denied Edwin Bautista's motion praying for the reconsideration of the April 30, 1998 resolution declaring him a nuisance candidate.

When the canvass of the election returns was commenced, the Municipal Board of Canvassers of Navotas refused to canvass as part of the valid votes of petitioner the separate tallies of ballots on which were written "EFREN BAUTISTA," "EFREN," "E. BAUTISTA," and "BAUTISTA." Said ballots were tallied by the BEI separately either on some portion of the election return not intended for votes for mayoralty candidates or in separate sheets of paper. In view of this refusal, objections to

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the inclusion of the election returns were raised during the canvass. Consequently, on May 20, 1998, petitioner filed with the COMELEC a Petition to Declare Illegal the Proceedings of the Municipal Board of Canvassers which was docketed as SPC No. 98-10. The assailed order resolving said petition reads in relevant part as follows:

> The issue before this Commission *En Banc* is whether or not the ruling of the Board of Canvassers not to include in the canvass the "Bautista stray votes" contained in the separate tally sheet constitutes an illegal proceeding thereof?
>
> We rule in the negative.
>
> The duty of the Board of Canvassers is only to canvass what is on the face of the election returns and not to go beyond it. Obviously, the stray votes in the separate tally sheet cannot be said to be entries in the election returns. Thus, the ruling of respondent board not to include in the canvass the Bautista stray votes is correct.
>
> Further, under the Omnibus Election Code, Section 211 (4) which provides:
>
> > "4. When two or more words are written on the same line on the ballot all of which are surnames of two or more candidates, the same shall not be counted for any of them, unless one is a surname of an incumbent who has served for at least one year in which case it shall be counted in favor of the latter."
>
> Thus, under the circumstances stray votes cannot be considered a vote for either party.
>
> WHEREFORE, premises considered, the instant petition of Cipriano "Efren" Bautista is hereby DISMISSED for lack of merit.
>
> (pp. 24-25, *Rollo*)

Meanwhile, on May 18, 1998, the disqualified nuisance candidate, Edwin "Efren" Bautista, filed a petition for *certiorari* with the Court, docketed as G.R. No. 133607, where he assailed the actions of the COMELEC Second Division and of respondent COMELEC *En Banc,* declaring him a nuisance candidate and ordering the cancellation of his certificate of candidacy. The Court dismissed said petition on May 21, 1998, ruling that there

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is no showing that the COMELEC committed grave abuse of discretion in declaring Edwin Bautista a nuisance candidate. Edwin Bautista's motion for reconsideration of our resolution was denied with finality on July 7, 1998.

The instant petition posits the following grounds for nullification of the assailed COMELEC order:

UTTER LACK AND DISREGARD OF DUE PROCESS IN THE ISSUANCE OF THE QUESTIONED ORDER; and

RESPONDENT COMELEC COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION IN DENYING THE INCLUSION AS PART OF PETITIONER'S VALID VOTES THE VOTES THAT WERE SEPARATELY TALLIED BY THE BOARDS OF ELECTION INSPECTORS AND THE RESPONDENT BOARD.

Let us first examine the due process issue as regards the issuance of the questioned order.

The petition resolved by COMELEC in the assailed resolution was lodged to declare illegal the proceedings of the Municipal Board of Canvassers of Navotas due to non-inclusion of votes which herein petitioner claims to be valid. On this score, we agree with petitioner that the matter falls under the category of special cases, particularly a pre-proclamation controversy raising the issue of the illegality of the proceedings of the board of canvassers (Sec. 3, Rule 27, Part V, Comelec Rules of Procedure).

Section 2 of the above-stated Rule provides that all pre-proclamation controversies shall be heard summarily after due notice. Hence, the COMELEC only has to give notice to the parties by issuing summons and by serving a copy of the petition. The proceedings being summary, the COMELEC may rely on whatever pleading that may have been filed by the parties. A hearing wherein the parties engage in oral argument is not required.

In *Zaldivar vs. Sandiganbayan* (166 SCRA 316 [1988]), we held that the right to be heard does not only refer to the right to present verbal arguments in court. A party may also be heard through his pleadings. Where opportunity to be heard is accorded

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either through oral arguments or pleadings, there is no denial of procedural due process. As reiterated in *National Semiconductor (HK) Distribution, Ltd. vs. NLRC* (G.R. No. 123520, June 26, 1998), the essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side. Hence, in *Navarro III vs. Damaso* (246 SCRA 260 [1995]), we held that a formal or trial-type hearing is not at all times and not in all instances essential. Plainly, petitioner was not denied due process.

We nevertheless find merit in petitioner's second argument.

The Municipal Board of Canvassers denied the inclusion, as part of petitioner's valid votes, of those vote that were separately tallied by the BEI and the Board of Canvassers.

When petitioner raised the matter to the COMELEC, the commission upheld the act of the Board of Canvassers, stating that the same cannot go beyond the election returns. In its Comment, the Office of the Solicitor General opines that the improvised sheets of paper containing the tally of Bautista stray votes cannot be legally considered in the canvass.

An examination of the foregoing incidents bring us to the following legal queries: (1) Did the "EFREN BAUTISTA" (or EFREN/E. BAUTISTA/BAUTISTA) votes which were tallied in separate sheets of paper categorically pertain to petitioner? Stated otherwise, did said separate tally reflect the intention of the voters?; (2) What is the legal effect of the final declaration made by the COMELEC that Edwin Bautista was a nuisance candidate? Further, what are the implications of the final and conclusive ruling of this Court on the issue? and (3) Will there be a disenfranchisement of the voters' will if the "EFREN BAUTISTA" votes separately tallied are not counted as votes for petitioner?

At the outset and initially setting aside all the ramifications of the substantive issue of the instant petition, the primordial concern of the Court is to verify whether or not on the day of the election, there was only one "Efren Bautista" as a validly registered candidate as far as the electorate was concerned.

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We find significant reference in the resolution of the COMELEC dated April 30, 1998 declaring Edwin Bautista a nuisance candidate, the *ratio decidendi* of which reads as follows:

> While Section 69 of the Omnibus Election Code does not explicitly provide for grounds to declare a nuisance candidate, it states clearly some tests, *viz*:
>
> > Sec. 69. *Nuisance candidates.* — The Commission may *motu proprio* or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy, if it is shown that said certificate has been filed *to put the election process in mockery or disrepute; or to cause confusion among the voters by the similarity* of the names of the registered candidates; or by other circumstances or acts which *clearly demonstrate that the candidate has no bona fide intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate.*
>
> In the present case, it has been established that respondent's known appellation or nickname is not "Efren" as stated in his Certificate of Candidacy, but "Boboy" or "Boboy Tarugo." Two "EFRENS" and two "BAUTISTAS" will necessarily confuse the voters and render worthless a vote for an 'Efren' or 'Bautista' during the appreciation of ballots, thus preventing the determination of the choice and true will of the electorate. Respondent's lack of financial means to support a campaign as an independent candidate is manifested by his inability to file his Income Tax Returns for calendar years 1995 and 1996. This only amplifies the fact that he has no *bona fide* intention to run for the position of municipal mayor of Navotas, a municipality with 104,601 registered voters.
>
> Respondent has not demonstrated any accomplishment/achievement in his twenty-six (26) years of existence as a person that would surely attract the electorate to choose him as their representative in government. Elective public officials are respected leaders in the community. Respondent has not shown any.
>
> This Commission as the vanguard of the people in the determination of the chosen representative of the electorate in government will not be an instrument to subvert that choice. The circumstances in

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the case at bar warrant that respondent be declared a nuisance candidate.

(pp. 28-29, *Rollo.*)

Edwin Bautista moved for reconsideration on May 8, 1998. Unfortunately, said motion was not resolved as of election day. Technically, the April 30, 1998 decision was not yet final as of May 11, 1998, and this technicality created serious problems on election day.

As mentioned earlier, the name of Edwin Bautista was initially not included in the list of candidates for mayor of Navotas. Then on election day itself, May 11, 1998, Edwin Bautista's name was included in the certified list of candidates. Later that same day, however, Edwin Bautista's name was again stricken off the list.

To remedy the situation which was bound to affect petitioner's candidacy, his counsel requested the COMELEC that a directive be issued to all members of the BEI of Navotas for the preparation of a separate tally for all votes in favor of: "Efren Bautista", "Edwin Bautista," "Efren," "Edwin," "E. Bautista," and "Bautista." The request for the separate tally was said to have been necessitated by the pendency of the petition before the COMELEC to disqualify Edwin Bautista for being a nuisance candidate. Since the final resolution of said petition was delayed due to the filing of a motion for reconsideration, counsel for petitioner stated that the basis must be laid down "for the ultimate appreciation of all Bautista votes in favor of petitioner," and the requested separate tally sheet would "protect his substantial rights" as well as the will of the electorate.

Consequently, as mentioned above, the Regional Election Director of the National Capital Region instructed the various boards of election inspectors to tally separately either in some other portion of the same election return not intended for the tallying of votes for the candidates for mayor, or in a separate sheet of paper, the votes for "EFREN BAUTISTA," "EFREN," "E. BAUTISTA," and "BAUTISTA." The then COMELEC Chairman affirmed said directive in a Memorandum to the Board

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of Canvassers of Navotas for the purpose of counting the total stray votes.

An analysis of the foregoing incidents shows that the separate tallies were made to remedy any prejudice that may be caused by the inclusion of a potential nuisance candidate in the Navotas mayoralty race. Such inclusion was brought about by technicality, specifically Edwin Bautista's filing of a motion for reconsideration, which prevented the April 30, 1998 resolution disqualifying him from becoming final at that time.

Ideally, the matter should have been finally resolved prior to election day. Its pendency on election day exposed petitioner to the evils brought about by the inclusion of a then potential, later shown in reality to be nuisance candidate. We have ruled that a nuisance candidate is one whose certificate of candidacy is presented and filed to cause confusion among the electorate by the similarity of names of the registered candidate or by other names which demonstrate that the candidate has no *bona fide* intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate. (*Fernandez vs. Fernandez,* 36 SCRA 1 [1970])

It must be emphasized that the instant case involves a ground for disqualification which clearly affects the voters' will and causes confusion that frustrates the same. This is precisely what election laws are trying to protect. They give effect to, rather than frustrate, the will of the voter. Thus, extreme caution should be observed before any ballot is invalidated. Further, in the appreciation of ballots, doubts are resolved in favor of their validity. (*Silverio vs. Castro,* 19 SCRA 521 [1967])

Section 69 of the Omnibus Election Code sets forth that the COMELEC may *motu propio* or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if the following situations are extant: (1) if it is shown that said certificate has been filed to put the election process in mockery or disrepute; (2) or if said certificate was filed to cause confusion among the voters by the similarity of the names of the registered candidate; (3) or if there are other

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circumstances or acts which clearly demonstrate that the candidate has no *bona fide* intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate.

As discussed in the COMELEC's April 30, 1998 decision, in accordance with Section 69, Edwin Bautista was found to be a nuisance candidate. First and foremost, he was running under the name of Edwin "Efren" Bautista, when it had been established that he was really known as "Boboy" or "Boboy Tarugo." Second, the following circumstances saliently demonstrate that he had no *bona fide* intention of running for the office for which he filed his certificate of candidacy: He is said to be engaged in a "buy and sell" business, but has no license therefor. He declared that he had a monthly income of ₱10,000.00 but with expenses totalling to ₱9,000.00. He does not own any real property. He did not file his income tax return for the years 1995 and 1996 and when asked why, he said he did not have any net income and that he was only earning enough to defray household expenses. He even violated COMELEC rules since he failed to submit the names of individuals who paid for his campaign materials as well as the printing press he dealt with. He did not have a political line-up and had no funds to support his campaign expenses. He merely depended on friends whose names he did not submit to the COMELEC. And as straightforwardly found by the COMELEC, he "has not demonstrated any accomplishment/achievement in his twenty-six (26) years of existence as a person that would surely attract the electorate to choose him as their representative in government."

In contrast, it was shown that petitioner had previously held under his name Cipriano and appellation, "Efren" Bautista, various elective positions namely: Barangay Captain of Navotas in 1962, Municipal Councilor of Navotas in 1970, and Vice-Mayor of Navotas in 1980. He is a duly registered Naval Architect and Marine Engineer, and a member of various civic organizations such as the Rotary Club of Navotas and the Philippine Jaycees.

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It seems obvious to us that the votes separately tallied are not really stray votes. Then COMELEC Chairman Bernardo P. Pardo himself, now a respected member of the Court, in his May 14, 1998 Memorandum, allowed the segregation of the votes for "Bautista," "Efren," and "Efren Bautista," and "E. Bautista" into a separate improvised tally, for the purpose of later counting the votes. In fine, the COMELEC itself validated the separate tallies since they were meant to be used in the canvassing later on to the actual number of votes cast. These separate tallies actually made the will of the electorate determinable despite the apparent confusion caused by a potential nuisance candidate. What remained unsaid by the COMELEC Chairman was the fact that as early as May 13, 1998, the COMELEC had already spoken and stated its final position on the issue of whether or not Edwin Bautista is a nuisance candidate. It had already denied Edwin's motion for reconsideration in its May 13, 1998 Order which reads:

> Deliberating on the motion for reconsideration of respondent Edwin "Efren" Bautista on the grounds therein stated, the Commission, Second Division, maintains its resolution. Commissioners Manolo B. Gorospe, Teresita Dy-Liacco Flores and Evalyn I. Fetalino concur with the Second Division's Resolution.
>
> IN VIEW WHEREOF, the motion for reconsideration is hereby DENIED. This denial is final.
>
> SO ORDERED.
>
> (p. 54, *Rollo*)

This important detail only shows that as of May 14, 1998, when Chairman Pardo issued the aforestated Memorandum, Edwin Bautista had already been finally declared as a nuisance candidate by the COMELEC. And when Edwin Bautista elevated the matter to this Court, we upheld such declaration. How then can we consider valid the votes for Edwin Bautista whom we finally ruled as disqualified from the 1998 Navotas mayoralty race? That is like saying one thing and doing another. These are two incompatible acts the contrariety and inconsistency of which are all too obvious.

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In this light, we now refer to the dispositive portion of COMELEC's April 30, 1998 resolution, which reads:

> WHEREFORE, in view of the foregoing, respondent *EDWIN "EFREN" BAUTISTA* is hereby declared a *NUISANCE CANDIDATE,* and consequently, his *CERTIFICATE OF CANDIDACY* for the position of Municipal Mayor of Navotas, Metro Manila, is hereby ordered *CANCELLED.*
>
> (pp. 29-30, *Rollo*)

Strictly speaking, a cancelled certificate cannot give rise to a valid candidacy, and much less to valid votes. However, since the aforestated ruling was not yet final on election day, how then do we determine the will of the electorate? Factual circumstances and logic dictate that the "Bautista" and "Efren" votes which were mistakenly deemed as "stray votes" refer to only one candidate, herein petitioner. Such votes, which represent the voice of approximately 21,000 electors, could not have been intended for Edwin Bautista, allegedly known in Navotas as a mere tricycle driver and worse, a drug addict, and satisfactorily and finally shown as a candidate with no political line-up, no personal funds that could have supported his own campaign, and no accomplishments which may be noted and considered by the public, as against a known former public officer who had served the people of Navotas as barangay official, councilor, and as vice-mayor. To rule otherwise will definitely result in the disenfranchisement of the will of the electorate, which is, as we mentioned, the situation that our election laws are enacted to prevent.

Verily, Edwin Bautista got only 29 votes, while petitioner under the very restrictive name Cipriano "Efren" Bautista got 17,981 votes. To be sure, however, there are 12,034 Bautista votes which have been tallied but not credited to petitioner, and there are 8,982 Bautista votes which were not tallied and credited to petitioner. These Bautista votes which total 21,016 could only have been meant for petitioner and which added to the 17,981 votes he got as Cipriano "Efren" Bautista would give him a grand aggregate of 38,997 votes.

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A stray vote is invalidated because there is no way of determining the real intention of the voter. This is, however, not the situation in the case at bar. Significantly, it has also been established that by virtue of newspaper releases and other forms of notification, the voters were informed of the COMELEC's decision to declare Edwin Bautista a nuisance candidate.

From another angle, it is likewise improper and strained to limit petitioner's votes to the ballots which only indicate the name "Cipriano" when it is of public knowledge that petitioner is also known by the appellation and nickname "Efren" which he in fact registered as his nickname.

As we said earlier, the instant petition is laden with an issue which involves several ramifications. Matters tend to get complicated when technical rules are strictly applied. True it is, the disqualification of Edwin Bautista was not yet final on election day. However, it is also true that the electorate of Navotas was informed of such disqualification. The voters had constructive as well as actual knowledge of the action of the COMELEC delisting Edwin Bautista as a candidate for mayor. Technicalities should not be permitted to defeat the intention of the voter, especially so if that intention is discoverable from the ballot itself, as in this case.

WHEREFORE, premises considered, the petition is hereby GRANTED and the assailed order of respondent COMELEC dated May 28, 1998 is hereby REVERSED and SET ASIDE. Respondent COMELEC is likewise directed to order the inclusion, as part of the valid votes of petitioner, the following votes that were separately tallied by the boards of election inspectors: "EFREN BAUTISTA," "EFREN," "E. BAUTISTA" and "BAUTISTA."

SO ORDERED.

Narvasa, C.J., Davide, Jr., Romero, Bellosillo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, and *Purisima, JJ.,* concur.

Martinez, J., no part, on official leave.

Pardo, J., no part, COMELEC Chairman at the time the events material hereto occurred.