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Tecson vs COMELEC : 161434 : March 3, 2004 : J. Azcuna : En Banc : Separate Opinion ammy 5 1
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 3; var simpleNav = 1; var browser = navigator.appName; var version = parseInt(navigator.appVersion); if
 ((browser.indexOf("Microsoft") != -1) || (version >= 4)) simpleNav = 0; function old_gotoHit(where) {
 window.location.hash = where; } function findLink(links, name) { if (links.namedItem) return
 links.namedItem(name); for (i = 0; i 1) return; if (a.y) { // Netscape window.scrollTo(0, a.y); } else { // IE
 window.scrollTo(0, a.offsetTop - a.offsetHeight + a.offsetParent.offsetTop); } var s =
 document.body.createTextRange(); if (s != null) { s.moveToElementText(a); s.moveEnd("word"); s.select();
 s.scrollIntoView(); } } function gotoNthHit(n) { nHit = n; if ((n > 1) && (n == maxHits)) gotoHit('hit_last'); else
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SEPARATE OPINION**AZCUNA, J.:**

“Present your evidence and don’t be nervous”

- Alice in Wonderland

“[This gets] curioser and curioser”

- Through the Looking Glass

These are petitions that, directly or indirectly, seek to disqualify a candidate for the Presidency of the land.

Two of the petitions seek a direct action for this purpose, those of petitioners Tecson, et al., and Velez. These two petitions fail outright. The “contest” they rely on is as yet non-existing, since it refers to a situation when someone has been proclaimed a winner after the elections and his proclamation is challenged in a “contest.” The provision in the Constitution (Art. VII, Sec. 4, par. 7, Constitution) that says that “the Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President,” cannot be invoked before the elections.

The petition of Fornier, on the other hand, took a different route. Fornier started by filing a petition in the Commission on Elections and, having lost there, he now comes to us for relief.

Precisely what was Fornier’s case in the Comelec?

Fornier sought to disqualify Fernando Poe, Jr. from running for the Presidency on the ground that he stated in his

certificate of candidacy a material statement that is false. What was that? The statement that he was a natural-born Filipino. And what did the Comelec do? It first held, in its First Division, that it had no jurisdiction to rule on the issue, then, en banc, it held that, in any event, Fernando Poe, Jr. has not been shown to have deliberately misrepresented his citizenship even assuming that what he said was false. It then concluded that there is no ground to cancel his certificate of candidacy because by “a material statement that is false” is meant a deliberate falsehood.

Now, Fornier seeks to declare the Comelec en banc decision as erroneous and/or done with grave abuse of discretion amounting to lack or excess of jurisdiction.

Fornier argues that the Comelec en banc erred and/or gravely abused its discretion in that it should have squarely ruled on whether or not the statement of Poe, Jr. regarding his citizenship is false. Fornier further argues that the statement is in fact false so that Poe, Jr. is not qualified to run for President and should have been so declared and/or should be so declared by us now.

The first question is, do we have power or jurisdiction to review the Comelec en banc decision?

I say that we do, on two counts: First, under the specific provision of the Constitution stating that any decision, order, or ruling of the Comelec may be brought to us on certiorari by the aggrieved party within thirty days from receipt of a copy thereof (Art. IX, A., Sec. 7, Constitution). And second, under our power to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government (Art. VIII, Sec. 1, Constitution).

Addressing the subject at hand, how do we proceed?

First, by recognizing that we can only resolve questions of law and of jurisdiction, not of facts.

Is the question whether or not Fernando Poe, Jr. made a material representation that is false in his certificate of candidacy one of law, of jurisdiction, or of facts?

I submit that it has aspects of all three. We can resolve only the first and second (law and jurisdiction) but not the third (factual) aspects.

Accordingly, we shall proceed on the basis principally of three undisputed facts. These are:

1. The fact that Fernando Poe, Jr. was born on August 20, 1939 (Birth Certificate);
2. The fact that Fernando Poe, Sr. and Bessie Kelley (Poe, Jr.’s mother) were married on September 16, 1940 (Marriage Contract); and
3. The fact that Bessie Kelley was an American citizen (Admission in the Answer of Poe, Jr.).

I first wanted to refer the case back to the Comelec for reception of more evidence to cover gaps in the factual premises. There being no majority to sustain that course, I have to proceed by seeking to resolve the issues raised on the basis of the facts available to us now.

From the foregoing facts, Fornier argues that Poe, Jr. is shown to be an illegitimate child, since he was born before, or outside of, marriage, and thus, applying a number of our decisions in the past,[1] he follows the citizenship of his mother. Poe, Jr., therefore, was an American citizen at birth. Thus, he is not a natural-born Filipino, for the Constitution defines that term to mean one who is so at birth without having to perform any act to acquire or perfect his citizenship (Art. IV, Sec. 2, Constitution). Upon this reasoning, Fornier rests his case, arguing that the Comelec cannot evade this issue as it goes into the falsity of the statement made in the certificate of candidacy (which Fornier claims was deliberately made) and, it also goes into the qualifications of a candidate

for President, which the Comelec is empowered to determine even before the elections.

Is he right?

I submit that he is not. Fornier's case rests on the premise that Fernando Poe, Jr. is an illegitimate child at birth.

This takes us into the realm of civil law, regarding which we are thankful for the excellent presentation of amicus curiae Professor Ruben C. Balane, and under which an illegitimate (natural) child becomes legitimated by the subsequent marriage of his parents.

It is true that under the Old Civil Code, prevailing when Poe, Jr. was born, the effects of legitimation retroact only to the time of the marriage, and not to the time of birth.[2] However, the New Civil Code, effective on August 30, 1950, made the effects retroact to the time of the birth of the child.[3] It is also true that the Old Civil Code required, in addition to the marriage, an acknowledgment by the parent(s) in the birth certificate, a will or any public instrument.[4] Under the New Civil Code, however, this was liberalized so that acknowledgment can be done also in a statement before a court of record or in any authentic writing.[5] Furthermore, these new provisions of the law are made expressly applicable to persons born under the old regime if these are beneficial to them.[6] And, finally, under the Family Code of 1988, even the need for acknowledgment has been dropped, and retroactivity is also provided for, without prejudice to vested rights.[7]

Now, what we are concerned with here are not the civil rights of the person -- whether to support or to succession in the estate. And, as admitted by Fornier's counsel during the oral arguments, violation of vested rights are not presumed but must be proved, which has not been done here. Accordingly, at issue here is simply political status as a citizen, as ably pointed out by amicus curiae Justice Vicente V. Mendoza. Therefore, I hold the view that the new legislations retroact to benefit Poe, Jr., so that he must be deemed legitimated as of his birth. Since a legitimated child has all the rights of a legitimate child (and here, as stated, we refer only to citizenship), it is clear that, pursuant to the law, not being illegitimate at birth, Poe, Jr. does not follow the citizenship of his mother.

As to the point that such legitimation needed an act after birth, namely, the marriage of the parents, the same would not detract from the concept of a natural-born citizen. For the definition in the Constitution refers to those who are citizens from birth without having to perform any act to acquire or perfect their citizenship (Art. IV, Sec. 2, Constitution). Thus, it speaks of an act having to be done by the child, to acquire or perfect his citizenship, and does not cover acts of his parents.

From this it follows that Fornier's case falls, since he has not proven that Poe, Jr. was not a Filipino citizen at birth, a point that as petitioner he has the burden of showing.

For the nonce, this suffices. The rest of the questions, fortunately or unfortunately, will have to be resolved in an election contest, should one become appropriate in the future, in which the points brilliantly covered by amici curiae Rev. Joaquin G. Bernas, S.J. and Dean Merlin M. Magallona regarding the determination of the citizenship of Poe, Jr.'s father, may find application once the pertinent factual premises shall have been duly presented and established.

I VOTE, THEREFORE, to DISMISS the petitions of Tecson, et al., and Velez for lack of jurisdiction, and to DENY the petition of Fornier for lack of merit.

[1] Board of Immigration Commissioners v. Callano, 25 SCRA 890 (1968); Paa v. Chan, 21 SCRA 753 (1967); Zamboanga Transportation Co. v. Lim, 105 Phil. 1321 (1959); Serra v. Republic, G.R. No. L-4223, May 12, 1952; and United States v. Ong Tianse, 29 Phil. 332 (1915).

[2] Art. 123, Old Civil Code.

[3] Art. 273, New Civil Code.

[4] Art. 131, Old Civil Code.

[5] Art. 278, New Civil Code.

[6] Art. 2253, New Civil Code.

[7] Art. 256, Family Code.

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