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Tecson vs COMELEC : 161434 : March 3, 2004 : J. Tinga : En Banc : Separate Opinion ammy 8 52
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SEPARATE OPINION**TINGA, J.:**

Unabated, the “interesting” times march on.[1]

No sooner had the dust of battle settled in the impeachment case,[2] where this writer noted the unfurling saga of profound events that dominated the country’s recent past,[3] the cavalcade of occurrences of the last three months reached a crescendo with the filing of the instant cases before this Court. After the case involving the Chief Justice, we now address the question on the citizenship qualification for President of the land.

How the Chinese customary wish of “interesting” times will turn out for the Filipinos’ lot, whether as a curse or a blessing, still remains to be seen. But definitely, more than much depends on the Court’s disposal of the present controversy.

The instant cases are unique and unprecedented. For the first time the Court is tasked to ascertain the farthest reach of the term “natural-born citizen” in the context of an out-of-wedlock birth. For the first time too, the Court is disposed to resolve the citizenship qualification, affecting no less than a leading candidate for President before, in fact some time reasonably before and not after the elections, as was the Court’s wont in prior instances.[4]

To a man, the members of the Court are agreed that the Tecson and Velez petitions (G.R. No. 161434 and G.R. No. 161634) deserve unceremonious dismissal for prematurity and lack of jurisdiction. A different view though obtains as regards the Fornier petition (G.R. No. 161824). As it seeks to set aside rulings of the Commission of Elections (COMELEC), the Court’s jurisdiction over the petition finds mooring in no less than the Constitution.[5]

COMELEC Acted With Grave Abuse of Discretion

Fornier posits that the COMELEC acted with grave abuse of discretion in promulgating the assailed resolutions. The contention is meritorious.

In seeking outright dismissal of the Fornier petition, private respondent Poe proceeds from the premise that it is exclusively a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure. It is not.

The petition invokes as its basis Rule 64 of the Rules of Court, which is captioned “Review of Judgments and Final Orders or Resolutions of the Commission on Elections and the Commission on Audit.”

The 1997 Rules of Civil Procedure introduced this mode of review separate and distinct from the Rule 65 special civil action. The innovation is consonant with the constitutional provision[6] which allows the institution of a new review modality for rulings of constitutional commissions. It ordains that “(U)nless otherwise provided by this Constitution or by law,” the mode of review is certiorari. The Supreme Court introduced the new mode in the exercise of its power under the Constitution[7] to promulgate rules of pleading, practice and procedure in all courts.

Rule 64 appears to be a fusion of sorts of at least three other Rules, i.e., Rule 65, Rule 46 and Rule 43. Notably, as in a special civil action for certiorari under Rule 65, the Commission concerned is joined as party respondent unlike in an ordinary appeal or petition for review; the contents of the petition are similar to those required under Section 3 of Rule 46; the order to comment is similar to Section 6 of Rule 65; the effect of filing a petition is similar to Section 12 of Rule 43; and the provision on when the case is deemed submitted for decision is similar to Section 13 of Rule 43.[8]

A Rule 64 petition must be filed within thirty days from notice of the judgment, final order or resolution sought to be reviewed,[9] whereas a Rule 65 petition for certiorari calls for a sixty day period. The distinction gains greater significance in the context that great public interest inheres in the goal to secure expeditious resolution of election cases before the COMELEC.

In form, a petition under Rule 64 takes on the characteristics of a Rule 43 petition, which may allege errors of fact or law.[10] Similar to Rule 43, Rule 64 also provides that findings of fact that are supported by substantial evidence are binding.[11] As a new and independent mode of review a Rule 64 petition may as well be treated as a petition for review, under which errors of fact or law may also be rectified.

However, the Fornier petition also alleges grave abuse of discretion tantamount to lack or excess of jurisdiction. Verily, he prefaced all the grounds and arguments he raised with the common statement that the COMELEC committed grave and reversible errors of law and even acted with grave abuse of discretion.

Hence, while the Fornier petition comes out as an inelegant pastiche of Rule 64 and Rule 65 initiatory pleadings, it is not defective in form but on the contrary it can stand on its own merits. Aside from errors of law, it also raised errors of jurisdiction amounting to grave abuse of discretion.

The Fornier petition before the COMELEC is grounded on Section 1, Rule 23 of the COMELEC Rules of Procedure, which recognizes and allows petitions to deny due course to or cancel certificates of candidacy:

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 of political parties on the exclusive ground that any material representation contained therein as required by law is false.

Section 1, Rule 23 of said Rules, in turn, gives flesh to Section 78 of the Omnibus Election Code, which provides:

SEC. 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 any 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 notice and hearing, not later than fifteen days before the election.

Section 74, to which Section 78 refers, states:

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.

Unless a candidate has officially changed his name through a court approved proceeding, a candidate shall use in a certificate of candidacy the name by which he has been baptized, or he has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case a Muslim, his Hadji name after performing the prescribed religious pilgrimage: Provided, That when there are two or more candidates for an office with the same name and surname, each candidate, upon being made aware of such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in this certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.

The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-data and program of government not exceeding one hundred words, if he so desires. [Emphasis supplied]

Thus, in accordance with Section 78, supra, the petitioner in a petition to deny due course or to cancel a certificate of candidacy need only prove three elements. First, there is a representation contained in the certificate of candidacy. Second, the representation is required under Section 74. Third, the representation must be “material,” which, according to jurisprudence,[12] means that it pertains to the eligibility of the candidate to the office. Fourth, the representation is false.

Asserting that proof of intent to conceal is also necessary for a petition under Section 78 to prosper, Mr. Justice Kapunan wrote in *Romualdez-Marcos v. Commission on Elections*,[13] thus:

It is the fact of residence, not a statement in a certificate of candidacy which ought to be decisive in determining whether or not an individual has satisfied the [C]onstitution’s residency qualification requirement. The said statement becomes material only when there is or appears to be a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible. It would be plainly ridiculous for a candidate to deliberately and knowingly make a statement in a certificate of candidacy which would lead to his or her disqualification.[14] [Emphasis supplied]

The Court, reiterated the Kapunan pronouncement in *Salcedo II v. Commission on Elections*.^[15]

Adverting to *Romualdez-Marcos and Salcedo II*, the COMELEC En Banc ruled that while the element of materiality was not in question the intent to deceive was not established, not even the knowledge of falsity, thus:

Undeniably, the question on the citizenship or respondent falls within the requirement of materiality under Section 78. However, proof of misrepresentation with a deliberate attempt to mislead must still be established. In other words, direct and substantial evidence showing that the person whose certificate of candidacy is being sought to be cancelled or denied due course, must have known or have been aware of the falsehood as appearing on his certificate.^[16]

The pronouncements in *Romualdez-Marcos and Salcedo II*, however, are clearly not supported by a plain reading of the law. Nowhere in Section 78 is it stated or implied that there be an intention to deceive for a certificate of candidacy to be denied due course or be cancelled. All the law requires is that the “material representation contained [in the certificate of candidacy] as required under Section 74... is false.” Be it noted that a hearing under Section 78 and Rule 23 is a quasi-judicial proceeding where the intent of the respondent is irrelevant. Also drawing on the principles of criminal law for analogy, the “offense” of material representation is *malum prohibitum* not *malum in se*. Intent is irrelevant. When the law speaks in clear and categorical language, there is no reason for interpretation or construction, but only for application.^[17]

The reason for the irrelevance of intent or belief is not difficult to divine. Even if a candidate believes that he is eligible and purports to be so in his certificate of candidacy, but is subsequently proven in a Rule 23 proceeding to be, in fact or in law, not eligible, it would be utterly foolish to allow him to proceed with his candidacy. The electorate would be merely squandering its votes for – and the COMELEC, its resources in counting the ballots cast in favor of – a candidate who is not, in any case, qualified to hold public office.

The Kapunan pronouncement in the *Romualdez-Marcos* case did not establish a doctrine. It is not supported by law, and it smacks of judicial legislation. Moreover, such judicial legislation becomes even more egregious considering that it arises out of the pronouncement of only one Justice, or 6% of a Supreme Court. While several other Justices joined Justice Kapunan in upholding the residence qualification of Rep. Imelda Romualdez-Marcos, they did not share his dictum.^[18] It was his by his lonesome. Justice Puno had a separate opinion, concurred in by Justices Bellosillo and Melo. Justice Mendoza filed a separate opinion too, in which Chief Justice Narvasa concurred. Justices Romero and Francisco each had separate opinions.^[19] Except for Chief Justice Narvasa and Justice Mendoza, the Justices in the majority voted to grant Rep. Marcos’ petition on the ground that she reestablished her domicile in Leyte upon being widowed by the death of former President Marcos.

On the other hand, the reiteration of the Kapunan pronouncement in *Salcedo* is a mere obiter dictum. The Court dismissed the disqualification case on the ground that the respondent’s use of the surname “Salcedo” in her certificate of candidacy is not a material representation since the entry does not refer to her qualification for elective office.^[20] Being what it is, the *Salcedo* obiter cannot elevate the Kapunan pronouncement to the level of a doctrine regardless of how many Justices voted for *Salcedo*. Significantly, Justice Puno concurred in the result only.^[21]

Thus, in this case, it does not matter that respondent knows that he was not a natural-born Filipino citizen and, knowing such fact, proceeded to state otherwise in his certificate of candidacy, with an intent to deceive the electorate. A candidate’s citizenship eligibility in particular is determined by law, not by his good faith. It was, therefore, improper for the COMELEC to dismiss the petition on the ground that petitioner failed to prove intent to mislead on the part of respondent.

I submit, therefore, that the COMELEC acted with grave abuse of discretion in failing to make a determination of the findings of fact, as well as rule on the evidence before it. This failure is even violative of the Constitution, as well as relevant statutes and rules of procedure.[22] Especially blatant to my mind was the conclusion of the COMELEC that Lorenzo Pou “had ceased to be a Spanish subject and had become a Filipino citizen” by operation of the Philippine Bill of 1902 and the Jones Law, despite the absence of substantial evidence to support this claim. The relevant provisions of these laws are explicit. Those who were considered citizens of the Philippines under the Philippine Bill of 1902 and the Jones Law were those who, on 11 April 1899, were inhabitants of the Philippines who were Spanish subjects, and then resided in the Philippines, and did not elect to preserve their allegiance to the Crown of Spain.[23]

In *In Re: Bosque*,[24] petitioner therein, a Spanish national, had left the Philippines on 30 May 1899, returning only in 1901. The Court considered the established fact that Bosque had been in the Philippines on 11 April 1899. By operation of the Treaty of Paris, Bosque retained his Spanish citizenship by virtue of his presence in the Philippines on 11 April 1899. Furthermore, Bosque did not lose such Spanish citizenship because he failed to comply with the provisions of the Treaty of Paris that a Spanish national in the Philippines should expressly renounce his foreign allegiance within the eighteen-month period provided for in the Treaty of Paris that expired in 11 October 1900.[25]

It was possible that Lorenzo Pou, just like Bosque, failed to duly renounce his Spanish allegiance, assuming he was here in 11 April 1899. The COMELEC could have only concluded as it did that Lorenzo Pou was among those naturalized by the Treaty of Paris and relevant laws if it was established that Lorenzo Pou was present in the Philippines on 11 April 1899. No such proof was submitted to the COMELEC, and its baseless conclusion that Lorenzo Pou became a Filipino citizen constitutes grave abuse of discretion.

The Appreciation of the Evidence

The COMELEC failed in its duty as a trier of facts in refusing to appreciate the evidence presented before it. Instead, it chose to treat the matter as one of a pure question of law, despite that the allegations in the petition and arguments in rebuttal were grounded on factual matters.

Similarly before the Court, the resolution of the questions before us hinge on a definitive finding of fact. Ideally, this should entail deliberate appreciation of evidence, rulings on the admissibility, materiality and veracity of the documents. The Supreme Court is not a trier of facts,[26] nor does it appreciate evidence at the first instance.[27] The Court was not precluded by rule of procedure to remand the case to the COMELEC for the reception and trial on the facts. Moreover, the Court could have referred the Fornier petition to the Court of Appeals for the reception and trial on the evidence.

The Court however, has chosen not to remand the case either to the COMELEC or the Court of Appeals. The duty therefore, is to rule on the evidence as presented right now, even if its mettle has not been tested before a trier of facts. There is no substantial evidence at this point that indubitably proves the claim that Ronald Poe is a natural-born Filipino. Thus, as with the rest of my colleagues, I am compelled to primarily employ legal presumptions in formulating my opinion.

I am very mindful of the Court’s pronouncement that no presumption can be indulged in favor of the claimant of Philippine citizenship, and any doubt regarding citizenship must be resolved in favor of the State.[28]

This doctrine provides the Court guidance on how to resolve the several doubtful factual issues in the case. There may be several matters under the law that may be liberally construed, but I believe citizenship is not one of them. Filipino citizenship is conferred by law and nothing else, not even good faith or colorable possession thereof.

Citizenship is a privilege, and not a right.[29] To cheapen citizenship by according it through haphazard presumptions is tantamount to cheapening our nation's worth and soul.

Thus, any unresolved doubt cannot be adjudged in favor of Poe. His claim to natural-born citizenship must be established by law, and evidence in accord with the law.

I am willing to consider as authentic the following documents: the 1939 Birth Certificate of Poe, the 1941 Marriage Contract between Allan F. Poe and Bessie Kelley, the 1951 Death Certificate of Allan F. Poe, and the 1954 Death Certificate of Lorenzo Pou. These are official public documents which carry with them the presumption of regularity in execution, and moreover, their authenticity is not challenged by the parties. These documents are, at the very least, conclusive as to the facts of birth, marriage and death.

These documents were submitted by Poe before the COMELEC, in order to rebut Fornier's allegations. Yet these documents establish facts that are actually damaging to Poe's very claims. The Marriage Contract contradicts the notation in the Birth Certificate that in 1939, Allan F. Poe and Bessie Kelley were married. Since it is the Marriage Contract, and not the Birth Certificate that indubitably establishes the fact of marriage, it is more believable that Allan F. Poe and Bessie Kelley were married in 1941, two years after the birth of Poe. The conclusion that Poe was born illegitimate thus arises.

The submission of these documents effectively shifted the burden of evidence to Poe. The documents constitute prima facie evidence that Poe was born illegitimate, and correspondingly, carry no presumption of paternity. The duty falls on Poe to controvert the prima facie case.[30] Burden of proof remains immutable, but the burden of evidence can shift depending on the exigencies of the case.[31]

Apart from these documents, there really are no other factual findings that deserve consideration by this Court, not even the findings of a Senate Committee since they cannot be binding on this Court, as stressed by Justice Puno in another case.[32]

Paternity of Ronald Allan Poe Not Duly Established

The paternity of Ronald Allan Poe has not been conclusively established. Some may take stock in the purported admission of petitioner Fornier in his pleadings before both the COMELEC and this Court that respondent Poe is the son of Allan F. Poe. I am not as hasty to conclude that such an admission dispenses with proof. The rule on judicial admissions[33] is but an application of the law on estoppel.[34] The State is not put in estoppel by the mistakes or errors of its officials,[35] much less by those who, not being an agent thereof, is in no position to bind it. To hold otherwise would be to compel the State to recognize as a citizen one who is not by its most fundamental of laws, and in effect "sanction a monstrosity known as citizenship by estoppel." [36]

The truth is that no incontestable proof establishes that respondent Poe had been acknowledged by Allan F. Poe as his son. Allan F. Poe might have been listed as the father in the 1939 Birth Certificate, but such document was not signed by him. As Justice Vitug explains in his Separate Opinion, the birth certificate can be utilized to prove voluntary acknowledgment of filiation of paternity only if signed or sworn to by the father.[37]

I disagree with some of my colleagues who would utilize the Affidavit executed by one Ruby Kelley Mangahas as conclusive proof of respondent's paternity. This particular declaration does not fall under the evidentiary rule on "act or declaration about pedigree". The rule requires that the declaration about pedigree be made before the controversy has occurred.[38] The Mangahas Affidavit was executed on 12 January 2004, three days after Fornier filed his petition before the COMELEC. This declaration was clearly made only after the controversy had arisen, and reinforces the notion that it is a self-serving statement made by a relative of Poe.

Moreover, the Mangahas Affidavit is hearsay[39] and therefore inadmissible in evidence. Mangahas never testified as to her due execution of the affidavit. Perhaps her testimony was unnecessary before the summary proceedings in the COMELEC, but it is urged here that we accept the same as conclusive. To do so will create an ignominious precedent that would allow for all sorts of affidavits unverified by testimony to be introduced before this Court and be deemed admissible and conclusive.

Neither do I put much value as proof of filiation, the 1947 Philippine Army Affidavit purportedly executed by Allan F. Poe,. Therein, Allan F. Poe acknowledged one “Ronnie, age 5,” as his son. This document does not clearly establish that Allan F. Poe had acknowledged respondent Poe who was born in 1939. On its face, the document refers to a child born in 1942. This affidavit also contains other inconsistencies that contradict the other evidence which I deem as authentic. It adverts to a 1939 marriage between Allan F. Poe and Bessie Kelley, an item inconsistent with the Marriage Contract itself. I am not prepared to declare respondent Poe a Filipino citizen or the son of Allan F. Poe on the basis of such a dubious document.

In the end, there is nothing left but the Birth Certificate of 1939 and the Marriage Contract of 1940 that could be taken as proper evidence to establish filiation. Not only do they fail to prove filiation, they actually caution us against any hasty presumptions of paternity. These documents establish the illegitimacy of Poe, and illegitimate birth does not carry any presumption on paternity. Indeed, paternity has to be established by independent evidence. No such independent evidence is before this Court.

Since paternity has not been proven, there is no choice but to deem Poe as following the citizenship of his mother, the only parent conclusively established. This conclusion is militantly opposed by Poe, and even the amici curiae maintain that when Section 1(3), Article IV of the 1935 Constitution speaks of children “whose fathers are citizens of the Philippines,” it does not distinguish between legitimate and illegitimate children. So long as the father is a Filipino, so the argument goes, his child shall also be a Filipino.

Whether existing jurisprudence supports Fornier’s thesis has been the subject of extensive debate. Of these cases, perhaps *Ching Leng v. Galang*[40] comes the closest. There, the Court was confronted with the question of whether a naturalized Filipino transmits his Filipino citizenship when he adopts his illegitimate children by his Chinese wife. The Court held that the Civil Code did not extend the father’s privilege of citizenship to his adopted children. Although the Court found that —

.... The fact that the adopted persons involved in the case at bar are illegitimate children of appellant Ching Leng does not affect substantially the legal situation before us, for, by legal fiction, they are now being sought to be given the status of legitimate children of said appellant, despite the circumstances that the Civil Code of the Philippines does not permit their legitimation.[41]

— it nevertheless foreclosed any question on the significance of the children’s illegitimacy. In definite terms, the Court ruled, thru Justice Roberto Concepcion, that “[in] fact, illegitimate children are under the parental authority of the mother and follow her nationality, not that of the illegitimate father.”[42]

This principle, enunciated in *Ching Leng* and cases cited therein, is supported by international custom and the principles of law generally recognized with regard to nationality.[43] Thus, the delegates to the 1935 Constitutional Convention even voted down a proposed amendment to include as Filipino citizens the illegitimate children with a foreign father of a mother who was a citizen of the Philippines, believing “that the rules of international law were already clear to the effect that illegitimate children followed the citizenship of the mother.”[44]

This principle rests on sound policy. It is not rare that in cases of children born out of wedlock, the paternity is

either unknown or disputed. Logically, the nationality of the illegitimate child cannot follow that of the father. For States adhering to the rule of *jus sanguinis*, therefore, the nationality of the mother, the child's only known parent, becomes the only basis for the child's nationality. The principle thus benefits the child, saving him from a limbic, stateless existence.

The argument of respondent is premised on the notion that the paternity between respondent Poe and his alleged father Allan F. Poe has been sufficiently proven. Indeed, if that be the case, the principle that the citizenship of an illegitimate child follows that of the mother would lose its rationale and preclude its application. It is my assertion, however, that paternity has not been so proven; consequently, the rule invoked by petitioner still holds.

It has been urged that disqualifying Poe as a consequence of ruling that he follows the citizenship of his mother would constitute a violation of international law, particularly the Convention on the Rights of the Child. The Convention proscribes the commission of discriminatory acts against any person by reason of birth. The submission proceeds from the conviction that the paternity of Poe and, therefore, his Filipino citizenship, has been duly established. Truly, the Convention would find full application if it were so, but, sadly, it has not.

Surely, it is not suggested that, regardless of his not being a natural-born Filipino citizen, respondent is eligible to be President by virtue of such Convention. Obviously, it is municipal law, not international law, that determines the qualifications of a candidate for public office. It is also municipal law, not international law, that determines citizenship.[45]

Our Constitution requires natural-born citizenship as a requisite for holding the office of the Presidency of the Philippines. This is a rule derived mainly from the American legal experience, which adopted the principle as a safeguard against foreign subversion. As explained in a popular online magazine:

Though their concerns may now seem archaic, the framers were genuinely afraid of foreign subversion. Among their nightmare scenarios was the prospect of a European noble using his money and influence to sway the Electoral College, take command of the American army, and return the nascent nation to the royalist fold. At the time, several European figures such as France's Marquis de Lafayette, a hero of the Revolutionary War were quite popular in the New World, so the idea wasn't completely far-fetched.

The framers also took a lesson from Europe, where dynasties constantly schemed against one another. The men who drafted the Constitution were certainly familiar with the tragic example of Poland, where agents from Russia, Prussia, and Austria conspired to install a friendly monarch, Stanislaus II, and subsequently seized upon his weakness and partitioned the country among themselves. Keep in mind, too, that dynasties occasionally shuffled around Europe regardless of national origin; England's King George I, for example, was a Hanoverian who spoke zero English.

There is scant primary source material attesting to the 1787 Constitutional debate over Article II, Section I, which contains the "natural born" provision. The potential scourge of foreign influence, however, is mentioned several times in the Federalist Papers. And in a letter dated July 25, 1787, John Jay, the future first Chief Justice of the Supreme Court, wrote to George Washington:

Permit me to hint, whether it would not be wise & seasonable to provide a strong check to the admission of Foreigners into the administration of our national Government; and to declare expressly that the Command in chief of the American army shall not be given to, nor devolve on, any but a natural born Citizen.[46]

Historical context notwithstanding, the issues leading to the adoption of the rule cannot be easily discarded, even with the pretense of 20/20 hindsight. For many, these considerations remain material. Yet whether or not these concerns maintain to this day is of no moment. It would take a constitutional amendment, and not a judicial

declaration, that would overturn this requirement of natural-born citizenship.

No Proof of Lorenzo Pou's Acquisition of Filipino Citizenship

There is no evidence adduced that Lorenzo Pou was born in the Philippines, or was even present in the Philippines up until the first few decades of the 20th century. However, it is insisted that Lorenzo Pou obtained his citizenship by virtue of the Treaty of Paris and the Philippine Bill of 1902. I earlier concluded that the COMELEC acted with grave abuse of discretion in adopting this theory without any substantial evidence. Again, there is no proof that exists that Lorenzo Pou, a Spanish subject, was already present in the Philippines on 11 April 1899. It is the fact of presence on that date that renders operative the grant of mass naturalization. It is a fact that must be established, and sadly, the evidence fails to do so.

In *Co v. Electoral Tribunal*,^[47] the majority opinion concluded that the son of a naturalized Filipino and a natural-born Filipina was a natural-born Filipino by virtue of his election of Filipino citizenship in accordance with the 1973 Constitution; and the declaration of the 1971 Constitutional Convention that his brother had been earlier declared a natural-born citizen by virtue of his grandfather's acquisition of Filipino citizenship by operation of the Philippine Bill of 1902. However, the dissenting opinion of Mr. Justice Teodoro Padilla raises several points well worth considering, especially on the residency requirement core to the Philippine Bill of 1902:

The 1971 Constitutional Convention in holding that Emil L. Ong was a "natural-born citizen" of the Philippines under the 1935 Constitution laid stress on the 'fact'-and this appears crucial and central to its decision-that Emil L. Ong's grandfather, Ong Te, became a Filipino citizen under the Philippine Bill of 1902 and, therefore, his descendants like Emil L. Ong (and therefore, also private respondent) became natural-born Filipinos. The 1971 Constitutional Convention said:

"Ong Te, Emil Ong's grandfather, was a Spanish subject residing in the Philippines on April 11, 1899 and was therefore one of the many who became ipso facto citizens of the Philippines under the provisions of the Philippine Bill of 1902. Said law expressly declared that all inhabitants of the Philippine Islands who continued to reside therein and who were Spanish subjects on April 11, 1899 as well as their children born subsequent thereto, 'shall be deemed and held to be citizens of the Philippine Islands.' (Section 4, Philippine Bill of 1902)."

The "test" then, following the premises of the 1971 Constitutional Convention, is whether or not Ong Te, private respondent's and Emil L. Ong's grandfather was "an inhabitant of the Philippines who continued to reside therein and was a Spanish subject on April 11, 1899. " If he met these requirements of the Philippine Bill of 1902, then, Ong Te was a Filipino citizen; otherwise, he was not a Filipino citizen.

xxx

"Registro de Chinos" from years 1896 to 1897 which show that Ong Te was not listed as an inhabitant of Samar where he is claimed to have been a resident. Petitioners (protestants) also submitted and offered in evidence before the House Electoral Tribunal exhibit V, a certification of the Chief of the Archives Division, Records and Management and Archives Office, stating that the name of Ong Te does not appear in the "Registro Central de Chinos" for the province of Samar for 1895. These exhibits prove or at least, as petitioners validly argue, tend to prove that Ong Te was NOT a resident of Samar close to 11 April 1899 and, therefore, could not continue residing in Samar, Philippines after 11 April 1899, contrary to private respondents pretense. In the face of these proofs or evidence, private respondent FAILED TO PRESENT ANY REBUTTAL OR COUNTERVAILING EVIDENCE, except the decision of the 1971 Constitutional Convention in the case of Emil L. Ong, previously discussed.

It is not surprising then that, as previously noted, the majority decision of the House Electoral Tribunal skirted any reliance on the alleged ipso facto Filipino citizenship of Ong Te under the Philippine Bill of 1902. It is equally not

surprising that Ong Chuan, the son of Ong Te and father or private respondent, did not even attempt to claim Filipino citizenship by reason of Ong Te's alleged Filipino citizenship under the Philippine Bill of 1902 but instead applied for Philippine citizenship, through naturalization.

Nor can it be contended by the private respondent that the House Electoral Tribunal should no longer have reviewed the factual question or issue of Ong Te's citizenship in the light of the resolution of the 1971 Constitutional Convention finding him (Ong Te) to have become a Filipino citizen under the Philippine Bill of 1902. The tribunal had to look into the question because the finding that Ong Te had become a Filipino citizen under the Philippine Bill of 1902 was the central core of said 1971 resolution but as held in *Lee vs. Commissioners of Immigration*:

x x x. Everytime the citizenship of a person is material on indispensable in a judicial or administrative case, whatever the corresponding Court or administrative authority decides therein as to such citizenship is generally not considered as *res adjudicata*, hence it has to be threshed out again and again as the occasion may demand.[48]

Notably, not one of the Justices in the majority in the *Co* case chose to counter these observations of Justice Padilla. Hence, these pronouncements, even if in dissent, should not be deemed as discredited, as they have not been contradicted. Taken together with the rulings of the Court in *Bosque* and *Valles*, a doctrinal point is apparent - proof of residence in the Philippines on and after 11 April 1899 is necessary to establish that one has acquired the benefits of Filipino citizenship in accordance with the Treaty of Paris and the Philippine Bill of 1902. This is a matter that has been taken for granted by Poe, and even by some members of this Court.

Instead, tenuous connections are drawn from Lorenzo Pou's 1954 Death Certificate. Admittedly, the Death Certificate states that Lorenzo Pou was a Filipino. But it does not say when he became a Filipino. If, for example, Lorenzo Pou became a Filipino only in 1953, his death certificate would also state, without comment, that he was a Filipino. In this case, the date Lorenzo Pou became a citizen is crucial to Poe's cause, as he is alleging that he draws his natural-born citizenship from that of Lorenzo Pou. Yet the Death Certificate does not establish any presumption, disputable or conclusive, as to when Lorenzo Pou became a Filipino citizen. More so, it clearly cannot establish the fact that Lorenzo Pou was present in the Philippines on 11 April 1899. What it only establishes was that Lorenzo Pou was a resident of San Carlos, Pangasinan at the time of his death in 1954.

Even conceding that the presence of Lorenzo Pou in the Philippines was established as of 1916, when Allan F. Poe was born, the rule is that proof of the existence at a particular time of a fact of a continuous nature gives rise to an inference, that it exists at a subsequent time.[49] No similar inference can be drawn that such fact existed prior to the time it had been established. The presumption of inference of the continued existence of a condition or state of facts is generally considered to be prospective, not retrospective. Indeed, the presumption never runs backward.[50] The presence of Lorenzo Pou in the Philippines in 1916 or 1954 does not establish his presence in the Philippines in 1899. In 1916, he was already 46 years old, the average lifespan of the average male during that period, and yet it remains unanswered where he was prior to that time and more so in 1899.

The following findings are thus binding on the Court. Poe is an illegitimate child whose paternity has not been duly established. Even if it is assumed that Allan F. Poe was respondent's father, his own nationality has not been duly established. Lorenzo Pou's presence in the Philippines in 1899 cannot be determined; hence, no presumption of nationality can be accorded him.

"Let the people decide," respondent insists. That is also the battle cry of those among us who opt to take the path of least resistance – to let the sovereign will chart the course of the Philippine political landscape. That argument is also a malaise, whether caused by academic sloth, intellectual cowardice or judicial amnesia, which has unfortunately plagued this Court.[51] It is an easy cop-out that overlooks the fact that the Constitution is itself an

expression of the sovereign will. The Filipino people, by ratifying the Constitution, elected to be bound by it, to be ruled by a fundamental law and not by a hooting throng.

I harbor no pretensions of being wiser than our people when it comes to political questions. The questions raised, however, are not political but legal, and the people, by the same Charter to which they bound themselves, have reposed upon the members of this Court a duty to perform and an oath to uphold, to answer the hard legal questions and to blaze new trails in jurisprudence.

The Constitution prescribes the qualifications for elective office. The Omnibus Election Code outlines the procedures for challenging such qualifications. The Commission on Elections has rendered a resolution upholding respondent's eligibility. Petitions assailing that resolution have been filed before this Court. I see no reason why the Court should shirk from its constitutional obligation and allow the electorate to squander its votes on an ineligible candidate.

Respondent may indeed be at heart, and in mind, a natural-born Filipino. He may speak the vernacular, partake of the native ale, and portray the Filipino hero. He may have even exercised rights and enjoy privileges reserved to Filipino citizens. All these, however, do not constitute conclusive proof that he is one. For it may be that a person, otherwise disqualified by reason of citizenship, may exercise and enjoy such rights and privileges by representing – or mistaking – himself to be a Filipino.[52] It was incumbent upon the respondent, who claims natural-born status, to prove to the satisfaction of the Court that he really is such. Failing thus, and, as no presumption can be indulged in favor of the claimant of Philippine citizenship, the doubt must be resolved in favor of the State.[53]

I come to this conclusion without judgment on whether respondent is a curse about to be inflicted, or a blessing to be bestowed, upon the Filipino people. The undoubtedly interesting times that lay before us notwithstanding,

I vote to GRANT the Fornier Petition.

[1] See J. Tinga, concurring, *Francisco v. House of Representatives*, G. R. Nos. 160261-63, and accompanying cases, 10 November 2003.

[2] *Supra*, note 1.

[3] *Id.*

[4] See e.g., *Frivaldo v. COMELEC*, G.R. No. 87193, 23 June 1989; *Labo, Jr. v. COMELEC*, G.R. No. 10511, 3 July 1992, 211 SCRA 297, G.R. No. 86564, 7 August 1989, 176 SCRA 1; *Romualdez-Marcos v. COMELEC*, G.R. No. 119976, 18 September 1995, 300 SCRA 248; *Salcedo II v. COMELEC*, G.R. No. 135886, 16 August 1999, 447 SCRA 312; *Aquino v. COMELEC*, G.R. No. 120265, 18 September 1995, 248 SCRA 400.

[5] Sec. 7, Art. IX-A, 1987 Const. “ . . . Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Constitution may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.”

[6] *Feria and Noche*, *Civil Procedure Annotated*, vol. 2, 2001, p. 450.

[7] Sec. 5(5), Art. VIII, 1987 Const.

[8] *Supra*, note 6 at 452-453.

[9] Sec. 3, Rule 64, Revised Rules of Court.

[10] See Sections 3 and 7, Rule 43, Revised Rules of Court.

[11] See Section 10, Rule 43 and Section 5, Rule 64, Revised Rules of Court.

[12] *Salcedo II v. Commission on Elections*, G.R. No. 135886, 16 August 1999, 312 SCRA 447, citing cases.

[13] G.R. No. 119976, September 18, 1995, 248 SCRA 300.

[14] *Id.*, at 326.

[15] *Supra*, note 12.

[16] COMELEC En Banc Resolution, p. 4.

[17] *Republic v. Court of Appeals*, G.R. No. 103882, 25 November 1998, 299 SCRA 199.

[18] Voting to grant the petition were Chief Justice Narvasa, Justices Puno, Francisco, Bellosillo, Melo, and Mendoza. Curiously, in the cases at bar, Justice Vitug, who relies on the purported dictum of Justice Kapunan in his separate opinion, dissented from the main opinion. Justice Puno, who likewise cites this erroneous pronouncement, did not join the main opinion but chose to concur on other grounds.

[19] *Supra*, note 13 at pp. 347-368.

[20] *Supra*, note 12.

[21] *Supra*, note 15 at p. 462.

[22] See Section 14, Article VII, Constitution; Section 14, Chapter 3, Book VIII, E.O. 292, "The Administrative Code of 1987," Sections 1&2, Rule 18, COMELEC Rules of Procedure.

[23] See Article IX, Treaty of Paris (1898); Section 4, Philippine Bill of 1902; Section 2, Jones Law (1916).

[24] 1 Phil. 88. (1902).

[25] *Id.*, at 91. See also *Valles v. COMELEC*, G.R. No. 137000, 9 August 2000. "Under both organic acts, all inhabitants of the Philippines who were Spanish subjects on April 11, 1899 and resided therein including their children are deemed to be Philippine citizens. Private respondent's father, Telesforo Ybasco, was born on January 5, 1879, in Daet, Camarines Norte, a fact duly evidenced by a certified true copy of an entry in the Registry of Births. Thus, under the Philippine Bill of 1902 and the Jones Law, Telesforo Ybasco was deemed a Philippine Citizen." *Valles v. COMELEC*, G.R. No. 137000, 9 August 2000, 337 SCRA 543, 550.

[26] See *St. Martin Funeral Home v. NLRC, et al*, 356 Phil. 811, 824 (1998); *People v. Go*, G.R. Nos. 116001 & 123943, 14 March 2001, 354 SCRA 338, 346.

[27] "Documents forming no part of the proofs before the appellate court will not be considered in disposing of the issues of an action." *De Castro v. Court of Appeals*, 75 Phil. 824, 835 (1946).

[28] *Paa v. Chan*, 128 Phil. 815, 825. (1967).

[29] *Lo Beng Ha Ong v. Republic*, 134 Phil. 300, 305 (1968).

[30] *Jison v. Court of Appeals*, G.R. No. 124853, 24 February 1998, 286 SCRA 495, 532.

[31] *Bautista v. Hon. Sarmiento*, G.R. No. L-31733, 23 September 1985, 138 SCRA 587, 593.

[32] "There is a fundamental difference between a case in court and an investigation of a congressional committee. The purpose of a judicial proceeding is to settle the dispute in controversy by adjudicating the legal rights and obligations of the parties to the case. On the other hand, a congressional investigation is conducted in

aid of legislation. Its aim is to assist and recommend to the legislature a possible action that the body may take with regard to a particular issue, specifically as to whether or not to enact a new law or amend an existing one. Consequently, this Court cannot treat the findings in a congressional committee report as binding because the facts elicited in congressional hearings are not subject to the rigors of the Rules of Court on admissibility of evidence. *Agan, et al. v. Piatco*, G. R. Nos. 155001, 155547, and 155661, 21 January 2004.

[33] Rules of Court, rule 129, sec. 2.

[34] *Sta. Ana v. Maliwat*, G.R. No. L-23023, 31 August 1968, 24 SCRA 1018.

[35] *Philippine Bank of Communications v. Commissioner of Internal Revenue*, G.R. No. 112024, 28 January 1999, 302 SCRA 241.

[36] See *Republic v. Valero*, G.R. No. L-23524, 31 May 1985, 136 SCRA 617.

[37] See also Section 5 of the Civil Registry Law, Act No. 3753, also cited by Justice Vitug. "In case of an illegitimate child, the birth certificate shall be signed and sworn to jointly by the parents of the infant or only by the mother if the father refuses. In the latter case, it shall not be permissible to state or reveal in the document the name of the father who refuses to acknowledge the child, or to give therein any information by which such father could be identified."

[38] See Section 39, Rule 130, Revised Rules of Court.

[39] "Affidavits are classified as hearsay evidence since they are not generally prepared by the affiant but by another who uses his own language in writing the affiant's statements, which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse party is deprived of the opportunity to cross-examine the affiants, For this reason, affidavits are generally rejected for being hearsay, unless the affiant themselves are placed on the witness stand to testify thereon." *People's Bank and Trust Company v. Leonidas*, G.R. No. 47815, 11 March 1992, 207 SCRA 164, 166.

[40] G.R. No. L-11931, October 27, 1958. (Unrep.)

[41] *Id.*, at 10.

[42] *Ibid.* Underscoring in the original.

[43] See Dissenting Opinion, Fuller, C.J., *United States v. Wong Kim Ark*, 169 US 649, 708-789 (1897), 42 L. Ed. 890, 912. Also I Oppenheim, L. International Law §298.

[44] I Aruego, J. The Framing Of The Philippine Constitution 209.

[45] The Convention on Conflict of Nationality Laws, April 12, 1930 (signed at Hague Conference for Codification of International Law; 5 Hudson, International Legislation 359) provides as follows:

Art. 1. It is for each state to determine under its own law who are its nationals.xxx

Art. 2. Any question as to whether a person possesses the nationality of a particular state shall be determined in accordance with the law of that state.

[46] "Why Can't Arnold Be President? What the Founding Fathers were afraid of." <http://slate.msn.com/id/2096192>; by Brendan Koerner. (Posted 26 February 2004) The author is fellow at the New America Foundation.

[47] G.R. Nos. 92191-92 & 92202-03, 30 July 1991, 199 SCRA 692.

[48] *Id.*, at 745-746.

[49] VI Remedial Law 127, Oscar Herrera (1999 ed.), citing 1 Wharton's Criminal Evidence, 11[th] ed. 158).

[50] Am Jur 2d §245, pp. 292-293.

[51] E.g., *Frivaldo v. Commission on Elections*, G.R. Nos. 120295 and 123755, 28 June 1996, 257 SCRA 727.

[52] "The exercise by a person of the rights and/or privileges that are granted to Filipino citizens is not conclusive proof that he or she is a Filipino citizen. A person, otherwise disqualified by reason of citizenship, may exercise and enjoy the right or privilege of a Filipino citizen by representing himself to be a Filipino." *Paa v. Chan*, G.R. No. L-25845, October 31, 1967, 21 SCRA 753, 761.

[53] *Ibid.*

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