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Tecson vs COMELEC : 161434 : March 3, 2004 : J. Austria-Martinez : En Banc : Separate Opinion 1

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window.scrollTo(0, a.offsetTop - a.offsetHeight + a.offsetParent.offsetTop); } var s =
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SEPARATE OPINION**AUSTRIA-MARTINEZ, J.:**

There are three petitions before this Court which seek the disqualification of a prominent presidential aspirant in the forthcoming May 10, 2004 elections. The petitions are common in their allegation that Fernando Poe, Jr. (FPJ) is not a qualified candidate for the position of the President of the Philippines since he is not a natural-born Filipino citizen for the following reasons: (a) FPJ's father, Allan F. Poe, was not a Filipino citizen, but a Spanish citizen; (b) FPJ is an illegitimate child having been born out of wedlock; (c) the subsequent marriage of his parents did not inure to his benefit since they failed to comply with the procedural requirements for legitimation; and (d) FPJ, as an illegitimate child, follows the citizenship of his American mother, Bessie Kelley.

G.R. Nos. 161434 and 161634 invoke the Court's exclusive jurisdiction under the last paragraph of Section 4, Article VII of the 1987 Constitution.[1] I agree with the majority opinion that these petitions should be dismissed outright for prematurity. The Court has no jurisdiction at this point of time to entertain said petitions.

The Supreme Court, as a Presidential Electoral Tribunal (PET), the Senate Electoral Tribunal (SET) and House of Representatives Electoral Tribunal (HRET)[2] are electoral tribunals, each specifically and exclusively clothed with jurisdiction by the Constitution to act respectively as "sole judge of all contests relating to the election, returns, and qualifications" of the President and Vice-President, Senators, and, Representatives.[3] In a litany of cases, this Court has long recognized that these electoral tribunals exercise jurisdiction over election contests only after a candidate has already been proclaimed winner in an election.[4] Rules 14 and 15 of the Rules of the Presidential Electoral Tribunal[5] provide that, for President or Vice-President, election protest or quo warranto may be filed after the proclamation of the winner.

Prior to the proclamation of winners, questions on the eligibility and qualifications of a candidate may be addressed to the COMELEC only if they fall under Section 78 of the Batas Pambansa Blg. 881 (Omnibus Election Code) which provides:

Section 78. Petition to deny due course to or cancel a certificate of candidacy – A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material representation contained therein as required under Section 74[6] hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided after due notice and hearing, not later than fifteen days before the election. (Emphasis supplied)

In his Certificate of Candidacy, respondent FPJ asserts that he is a natural-born citizen and therefore eligible to the position of President of the Philippines.[7] Petitioner assails the truthfulness of such material representation. Thus, the issue whether or not respondent Poe made a material representation which is false is within the jurisdiction of the COMELEC to resolve under Section 78 of the Omnibus Election Code. And when the COMELEC denied the cancellation of the Certificate of Candidacy, petitioner, ascribing grave abuse of discretion on the part of COMELEC in denying his petition, appropriately filed G.R. No. 161824 under Rule 64 in relation to Rule 65 of the Rules of Court which provides that the mode of review of a judgment of the COMELEC may be brought by the aggrieved party to the Court on certiorari under Rule 65. Needless to stress, certiorari is an extraordinary remedy that can be availed of only for an error of jurisdiction, that is, one where the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction.[8]

In *Salcedo II vs. COMELEC*,[9] the Court held that in order to justify the cancellation of the certificate of candidacy under Section 78 of the Omnibus Election Code, it is essential that: (1) the false representation mentioned therein pertains to a material matter on the contents of the certificate of candidacy as provided in Section 74, that is, the qualifications for elective office as provided in the Constitution; and (2) the false representation must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.

The Court's jurisdiction in the present petition for certiorari is limited only to the question whether the COMELEC has acted with grave abuse of discretion amounting to lack or excess of jurisdiction in finding that the evidence of petitioner is weak and not convincing. Is it a capricious, whimsical and arbitrary exercise of discretion? The answer is definitely in the negative.

The Certificate of Candidacy was executed by respondent FPJ under oath. The law always presumes good faith.[10] One who alleges malice has the burden of proving the same.[11] It is elementary that contentions must be proved by competent evidence and reliance must be based on the strength of the party's own evidence and not upon the weakness of the opponent's defense.[12] To lay the burden of proof upon FPJ to prove his citizenship simply because petitioner assails the same is anathema to the well-recognized rule on the burden of proof.

The burden of proof is on the party who would be defeated if no evidence is given on either side.[13]

In other words, petitioner should have established by competent evidence before the COMELEC that the subject material representation is false and that it must have been made by respondent FPJ deliberately to deceive the electorate as to his eligibility for the position of President of the Philippines.

Justice Puno, in his separate opinion, has extensively discussed the evidence that were correctly considered by the COMELEC as weak and not convincing to which I fully subscribe, with the following additional observations:

Under Section 1 of Article IV of the 1935 Constitution, the following are citizens of the Philippines:

1. Those who are citizens of the Philippines at the time of the adoption of this Constitution.

...

3. Those whose fathers are citizens of the Philippines.

4. Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.

...

Pertinent in the determination of who were the citizens of the Philippines at the time of the adoption of the 1935 Constitution are the Treaty of Paris of 1898, the Philippine Bill of 1902 and the Philippine Autonomy Act of 1916, otherwise known as the Jones Law.

Article IX of the Treaty of Paris of 1898 reads:

Spanish subjects, natives of the peninsula, residing in the territory over which Spain by the present treaty relinquished or cedes her sovereignty, may remain in such territory or may remove therefrom, retaining in either event all their rights or property, including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce and professions, being subject in respect thereof to such laws as are applicable to other foreigners. In case they remain in the territory they may preserve their allegiance to the Crown of Spain by making, before a court of record, a year from the date of the exchange of ratification of this treaty, a declaration of their decision to preserve such allegiance' in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside. (Emphasis supplied)

Section 4 of the Philippine Bill of 1902 enacted by U.S. Congress, reads:

That all inhabitants of the Philippines Islands who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in said islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippines Islands, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain, signed in Paris December tenth, eighteen hundred and ninety eight, and except such others as have since become citizens of some other country; Provided, That the Philippine Legislature, herein provided for, is hereby authorized to provide by law for the acquisition of Philippines citizenship by those natives of the Philippine Islands who do not come within the foregoing provisions, the natives of the insular possessions of the United States, and such other persons residing in the Philippines Islands who are citizens of the United States, or who could become citizens of the United States under the laws of the United States if residing therein. (Emphasis supplied)

Section 2 of the Jones Law reads:

That all inhabitants of the Philippine Islands who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in said islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippines Islands, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain, signed at Paris December tenth, eighteen hundred and ninety eight, and except such others as have since become citizens of some other country: Provided, that the Philippine Legislature, herein provided for, is hereby authorized to provide by law for the acquisition of Philippine citizenship by those natives of the Philippine Islands who do not come within the foregoing provisions, the natives of the insular possessions of the

United States, and such other persons residing in the Philippine Islands who are citizens of the United States, or who could become citizens of the United States under the laws of the United States if residing therein. (Emphasis supplied)

Petitioner's Exhibit "D", a certification of the National Archives that it has no record that respondent's grandfather Lorenzo Pou entered or resided in the Philippines before 1907, seeks to establish that respondent FPJ is Spanish as his grandfather was a Spanish citizen for which reason, his son, Allan Poe, FPJ's father, was a Spanish citizen under the aforementioned provisions of the Treaty of Paris and Philippine Bill of 1902. Said exhibit is neither here nor there considering that, as noted by Justice Puno, the petitioner had failed to demonstrate that the National Archives has a complete record of all persons who lived in the Philippines during the Spanish and American occupation.

Moreover, petitioner Fornier failed to present competent evidence that respondent FPJ's grandfather had preserved his allegiance to the Crown of Spain by having made a declaration to that effect before a court of record, pursuant to the Treaty of Paris. Consequently, in the absence of such evidence, it cannot be validly concluded that FPJ's grandfather remained a Spanish citizen and transmitted his citizenship to FPJ's father. It is also true that neither could anyone conclusively conclude on that basis, that FPJ's grandfather did not retain his Spanish citizenship. In either case, it sustains the view of the COMELEC that the evidence of petitioner is weak and not convincing.

As earlier stated, the onus probandi is on petitioner to prove his claim, failing which his petition to cancel the certificate of candidacy of respondent FPJ must necessarily fail. The COMELEC's assessment of the evidence presented before it must perforce be accorded full respect.

It is suggested that the case be remanded to the COMELEC or the Court of Appeals for the presentation of additional evidence to enable the Court to finally determine the citizenship of respondent Poe. With all due respect to the proponents, I submit that to do so would not only be contrary to basic fair play but also it is not within the jurisdiction of the Court to make a final determination of respondent FPJ's citizenship in the present petition for certiorari which is specifically on the ground of grave abuse of discretion in not canceling the certificate of candidacy under Section 78 of the Omnibus Election Code. The issue on citizenship may be properly dealt with in a quo warranto proceeding which is available to protesters only after elections under Section 4, Article VII of the 1987 Constitution.

As a last pitch effort to disqualify respondent FPJ, petitioner posits that the phrase "those whose fathers are citizens of the Philippines" in the 1935 Constitution should refer only to legitimate children, relying upon the cases of Chiongbian vs. De Leon,[14] Serra vs. Republic,[15] Morano vs. Vivo,[16] and Paa vs. Chan;[17] that inasmuch as it appears that respondent Poe is an illegitimate son, then he follows the citizenship of his mother who was an American citizen per respondent FPJ's birth certificate. However, the cited cases are inapplicable because they are not squarely in point. These cases did not involve an illegitimate child of a Filipino father or the issue of citizenship in relation to the exercise of the right to be elected into office. Besides, the Court's pronouncements in these cases that illegitimacy in relation to citizenship are merely obiter dicta, obviously non sequitur. Obiter dictum simply means words of a prior opinion entirely unnecessary for the decision of the case[18] or an incidental and collateral opinion uttered by a judge and therefore not material to his decision or judgment and not binding.[19] As such, the pronouncements therein on illegitimacy in relation to citizenship must be disregarded as the ruling of the Court cannot be duly extended to expand the main thrust of the decisions beyond their true import.

The fundamental principle in constitutional construction is that the primary source from which to ascertain

constitutional intent or purpose is the language of the provision itself. The presumption is that the words in which the constitutional provisions are couched express the objective sought to be attained. Otherwise stated, verba legis still prevails. Only when the meaning of the words used is unclear and equivocal should resort be made to extraneous aids of construction and interpretation, such as the proceedings of the Constitutional Commission or Convention, in order to shed light on and ascertain the true intent or purpose of the provision being construed.[20]

Section 1, Article IV of the 1935 Constitution does not provide for a qualification that the child be a product of a legitimate union for the child to acquire the nationality of the Filipino father. Ubi lex non distinguit nec nos distinguere debemus. When the law does not distinguish, neither should we. There should be no distinction in the application of the fundamental law where none is indicated. The drafters of the Constitution, in making no qualification in the use of the general word “father” must have intended no distinction at law. The Courts could only distinguish where there are facts or circumstances showing that the lawgiver intended a distinction or qualification. In such a case, the courts would merely give effect to the lawgiver’s intent.[21]

Clearly, the framers of the 1935 Constitution simply provided that when paternity is known or established, the child follows the father’s citizenship; otherwise, the citizenship of the mother is followed. If we concede that the framers of the Constitution intended a qualification that the child be the product of a legitimate union, such would lead to clear injustice, and a restricted interpretation, by creating a distinction when the language of the law is clear and unambiguous.

Thus, based on the evidence presented before it, the COMELEC did not commit any grave abuse of discretion in concluding that petitioner failed to present substantial evidence that FPJ has knowingly or deliberately committed a material representation that is false in his certificate of candidacy.

For the foregoing reasons, I vote to dismiss all the petitions.

[1] SEC. 4. . . . 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, and may promulgate its rule for the purpose.

[2] Section 17, Article VI of the 1987 Constitution reads:

SEC. 17. The Senate and the House of Representatives shall each have an electoral tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective members. . . .

[3] *Angara vs. Electoral Commission*, 63 Phil. 139 (1936); *Lazatin vs. House of Representatives Electoral Tribunal*, 168 SCRA 391 (1988); *Co vs. Electoral Tribunal of the House of Representatives*, 199 SCRA 692 (1991); and, *Chavez vs. COMELEC*, 211 SCRA 315, 322 (1992).

[4] See *O’Hara vs. COMELEC*, 379 SCRA 247 (2002); *Dumayas, Jr. vs. COMELEC*, 357 SCRA 358 (2001); *Guerrero vs. COMELEC*, 336 SCRA 458 (2000); *Barroso vs. Ampig, Jr.*, 328 SCRA 530 (2000); *Caruncho III vs. COMELEC*, 315 SCRA 693 (1999); *Rasul vs. COMELEC*, 313 SCRA 18 (1999); *Aquino vs. COMELEC*, 248 SCRA 400 (1995); *Romualdez-Marcos vs. COMELEC*, 248 SCRA 300 (1995); *Pangilinan vs. COMELEC*, 228 SCRA 36 (1993); *Sampayan vs. Daza*, 213 SCRA 807 (1992); *Lazatin vs. COMELEC*, 157 SCRA 337, 338 (1988) *Lomugdang vs. Javier*, 21 SCRA 402 (1967); and, *Vda. de De Mesa vs. Mencias*, 18 SCRA 533 (1966).

[5] Rules 14 and 15 of the Rules of the Presidential Electoral Tribunal read as follows:

RULE 14. Election Protest. – Only the registered candidate for President or for Vice-President of the Philippines who received the second or third highest number of votes may contest the election of the President or the Vice-President, as the case may be, by filing a verified petition with the Clerk of the Presidential Electoral

Tribunal within thirty (30) days from the proclamation of the winner.

RULE 15. Quo Warranto. – A verified petition for quo warranto contesting the election of the President or Vice-President on the ground of ineligibility or of disloyalty to the Republic of the Philippines may be filed by any voter within ten (10) days after the proclamation of the winner. (Emphasis supplied)

[6] 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. (Emphasis supplied)

.....

[7] Section 2, Article VII of the Constitution provides:

Section 2. No person may be elected president unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

[8] Fortich vs. Corona, 289 SCRA 624, 642 (1998).

[9] 312 SCRA 447 (1999). See also Frivaldo vs. COMELEC, 174 SCRA 245 (1989); Abella vs. Larrazabal, 180 SCRA 509 (1989); Labo vs. COMELEC, 211 SCRA 297 (1992); Frivaldo vs. COMELEC, 232 SCRA 785 (1996); and, Frivaldo vs. COMELEC, 257 SCRA 727 (1996).

[10] Chua vs. Court of Appeals, 242 SCRA 341, 345 (1995).

[11] Bernardino vs. Ignacio, 253 SCRA 641, 644 (1996); Ford Philippines, Inc. vs. Court of Appeals, 267 SCRA 320, 329 (1997); Cancio vs. Garchitorena, 311 SCRA 268, 286 (1999).

[12] Saguid vs. Court of Appeals, G.R. No. 150611, June 10, 2003; Heirs of Anastacio Fabela vs. Court of Appeals, 362 SCRA 531, 547 (2001); Javier vs. Court of Appeals, 231 SCRA 498, 504 (1994); and, Pornellosa vs. Land Tenure Administration, 110 Phil. 986, 991 (1961).

[13] Summa Insurance Corporation vs. Court of Appeals, 253 SCRA 175, 185 (1996).

[14] 46 O.G. 3652.

[15] L-4223, May 12, 1952.

[16] 20 SCRA 562 (1967).

[17] 21 SCRA 753 (1967).

[18] Black's Law Dictionary, p. 1222, citing Noel vs. Olds, 78 U.S. App. D.C. 155.

[19] Webster's Third New International Dictionary, p. 1555.

[20] *Ang Bagong Bayani-OFW Labor Party vs. COMELEC*, 359 SCRA 698, 724 (2001), citing *JM Tuason & Co., Inc. vs. Land Tenure Administration*, 31 SCRA 413 (1970); *Gold Creek Mining Corp. vs. Rodriguez*, 66 Phil. 259, 264 (1938); *Ruben C. Agpalo*, *Statutory Construction*, 1990 ed., p. 311.

[21] *Guerrero vs. COMELEC*, *supra*, Note No. 4, p. 468, citing *Social Security System vs. City of Bacolod*, 115 SCRA 412, 415 (1982).

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