

BENJAMIN P. ABELLA, PETITIONER, VS. COMMISSION ON ELECTIONS, AND ADELINA Y. LARRAZABAL, RESPONDENTS.*G.R. No. 100710. September 03, 1991*

Ponente: GUTIERREZ, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-100710/>**GUTIERREZ, JR., J.:**

The main issue in these consolidated petitions centers on who is the rightful governor of the province of Leyte — 1) petitioner Adelina Larrazabal (G. R. No. 100739) who obtained the highest number of votes in the local elections of February 1, 1988 and was proclaimed as the duly elected governor but who was later declared by the Commission on Elections (COMELEC) "x x x to lack both residence and registration qualifications for the position of Governor of Leyte as provided by Art. X, Section 12, Philippine Constitution in relation to Title II, Chapter I, Sec. 42, B. P. Blg. 137 and Sec. 89, R. A. No. 179 and is hereby disqualified as such Governor"; 2) petitioner Benjamin Abella (G. R. No. 100710), who obtained the second highest number of votes for the position of governor but was not allowed by the COMELEC to be proclaimed as governor after the disqualification of Larrazabal; or 3) Leopoldo E. Petilla, the vice-governor of the province of Leyte.

This is the fourth time that the controversy relating to the local elections in February 1, 1988 for governor of the province of Leyte is elevated to this Court. The antecedent facts of these cases are stated in the earlier consolidated cases of BENJAMIN P. ABELLA and SILVESTRE T. DE LA CRUZ, petitioners, v. ADELINA INDAY LARRAZABAL, PROVINCIAL BOARD OF CANVASSERS OF LEYTE and COMMISSION ON ELECTIONS, respondents (G. R. Nos. 87721-30) and BENJAMIN P. ABELLA and SILVESTRE T. DE LA CRUZ, petitioners v. ADELINA LARRAZABAL and COMMISSION ON ELECTIONS, respondents (G. R. No. 88004) 180 SCRA 509 [1989]), to wit:

The Court has ordered the consolidation of G. R. Nos. 87721-30 and G. R. No. 88004 involving the same parties and the same election in 1988 for the office of provincial governor of Leyte. Challenged in the petitions for certiorari are the resolutions of the respondent Commission on Elections dismissing the pre-proclamation and disqualification cases filed by the herein petitioners against private respondent Adelina Larrazabal.

Petitioner Benjamin P. Abella was the official candidate of the Liberal Party for provincial governor of Leyte in the local election held on February 1, 1988. The private respondent is the wife of Emeterio V. Larrazabal, the original candidate of the Lakas ng Bansa-PDP-Laban who was disqualified by the Commission on Elections on January 18, 1988, for lack of residence. (G.R. No. 88004, Rollo, pp. 102-104) (He filed a petition for certiorari to challenge this resolution. He, however, filed an urgent ex-parte motion to withdraw petition which was granted in a resolution dated January 21, 1988 and the case was dismissed. [G.R. No. 81313]) On January 31, 1988, the day before the election, she filed her own certificate of candidacy in substitution of her husband. (Ibid., p. 48) The following day, at about 9:30 o'clock in the morning, Silvestre de la Cruz, a registered voter of Tacloban City, filed a petition with the provincial election supervisor of Leyte to disqualify her for alleged false statements in her certificate of candidacy regarding her residence. (Id., pp. 113-118) This was immediately transmitted to the main office of the Commission on Elections, which could not function, however, because all but one of its members had not yet been confirmed by the Commission on Appointments.

De la Cruz then came to this Court, which issued a temporary restraining order on February 4, 1988, enjoining the provincial board of canvassers of Leyte 'from proclaiming Adelina Larrazabal as the winning candidate for the Office of the Governor in the province of Leyte, in the event that she obtains the winning margin of votes in the canvass of election returns of said province.' (Id., p. 179) On March 1, 1988, the Commission on Elections having been fully constituted, we remanded the petition thereto 'for appropriate action, including maintenance or lifting of the Court's temporary restraining order of February 4, 1988.' (Id., pp. 182-184).

In the meantime, petitioner Abella, after raising various verbal objections (later duly reduced to writing) during the canvass of the election returns, seasonably elevated them to the Commission on Elections in ten separate appeals docketed as SPC Nos. 88-627 to 88-627-I. Pending resolution of these cases, Abella intervened on March 7, 1988 in the disqualification case, docketed as SPC No. 88--546, and the following day filed a criminal complaint with the Law Department of the COMELEC charging the private respondent with falsification and misrepresentation of her residence in her certificate of candidacy.

On March 22, 1988, the public respondent consolidated the pre-proclamation and disqualification cases with the Second Division. On February 3, 1989, this Division unanimously upheld virtually all the challenged rulings of the provincial board of canvassers, mostly on the ground that the objections raised were merely foral and did not affect the validity of the returns or the ballots, and ordered the proclamation of the winner after completion of the canvass. (G. R. Nos. 87721--30, Rollo, pp. 18-50) On that same date, the disqualification case was also dismissed by a 2-1 decision, and the matter was referred to the Law Department for 'preliminary investigation for possible violation of Section 74 of the Omnibus Election Code.' (G. R. Nos. 88004, Rollo, pp. 26-40)

The motion for reconsideration of the resolution on the pre-proclamation cases was denied by the COMELEC en banc on April 13, 1989, with no dissenting vote. (G.R. Nos. 87721-30, Rollo, pp. 51-56) These cases are the subject of G. R. Nos. 87721-30, where we issued on April 18, 1989, another temporary restraining order to the provincial board of canvassers of Leyte to CEASE and DESIST from resuming the canvass of the contested returns and/or from proclaiming private respondent Adelina Larrazabal Governor of Leyte.

The motion for reconsideration of the resolution on the disqualification case was also denied by the COMELEC en banc on May 4, 1989, but with three commissioners dissenting. (G.R. No. 88004, Rollo, pp. 47-61; penned by Commissioner Abueg, Jr., with Commissioners Africa, Rama, and Yorac, dissenting) The dismissal of this case is the subject of G. R. No. 88004.. (at pp. 511-513)

Disposing of the consolidated petitions, this Court rendered judgment as follows:

"1. In G. R. Nos. 87721-30, the decision dated February 3, 1989, and the resolution dated April 13, 1989, are affirmed and the petition is DISMISSED.

2. In G. R. No. 88004, the decision dated February 3, 1989, and the resolution dated May 4, 1989, are REVERSED and SET ASIDE. Respondent Commission on Elections is ORDERED to directly hear and decide SPC Case No. 88--546 under Section 78 of the Omnibus Election Code, with authority to maintain or lift our temporary restraining order of April 18, 1989, according to its own assessment of the evidence against the private respondent.

The parties are enjoined to resolve this case with all possible speed, to the end that the regular Governor of Leyte may be ascertained and installed without further delay." (p. 520)

In view of these rulings, the COMELEC, upon motion of Larrazabal, lifted its temporary restraining order against her proclamation paving Larrazabal's proclamation and her assumption to the Office of Governor of Leyte while the hearings in the disqualification case (SPC No. 88-546) continued.

On February 14, 1991, the second division in a 2-1 vote rendered a decision disqualifying Larrazabal as governor.

On July 18, 1991, the Commission en banc issued a resolution which denied Larrazabal's motion to declare decision void and/or motion for reconsideration and affirmed the second division's decision. In the same resolution, the Commission disallowed Abella's proclamation as governor of Leyte.

Hence, these petitions.

We treat the various Comments as Answers and decide the petitions on their merits.

Acting on a most urgent petition (motion) for the issuance of a restraining order filed by petitioner Larrazabal, this Court issued a temporary restraining order on August 1, 1991.

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"x x x [E]ffective immediately and continuing until further orders from this Court, ordering the respondent Commission on Elections to CEASE and DESIST from enforcing, implementing and executing the decision and resolution, respectively dated February 14, 1991 and July 18, 1991.

It appearing that despite the filing of this petition before this Court and during its pendency, the incumbent Vice-Governor of Leyte, Hon. Leopoldo E. Petilla, took his oath as Provincial Governor of Leyte and assumed the governorship as contained in his telegraphic message, pursuant to COMELEC resolution SPC No. 88-546, promulgated on July 18, 1991, the Court further Resolved to ORDER Hon. Leopoldo E. Petilla to MAINTAIN the status quo ante then prevailing and/or existing before the filing of this petition and to DESIST from assuming the office of the Governor and from discharging the duties and functions thereof." (Rollo-100739, p. 204)

In G. R. No. 100739, petitioner Larrazabal professes that the COMELEC completely disregarded our pronouncement in G. R. No. 88004 in that instead of acting on SPC Case No. 88-546 under section 78 of the Election Code, the COMELEC proceeded with a disqualification case not contemplated in G. R. No. 88004.

The argument is not meritorious.

The questioned decision and resolution of the COMELEC conform with this Court's decision in G.R. No. 88004.

Initially, herein respondent Silvestre T. de la Cruz (Benjamin P. Abella, petitioner in G.R. No. 100710 was allowed to intervene in the case) filed a petition with the COMELEC to disqualify petitioner Larrazabal from running as governor of Leyte on the ground that she misrepresented her residence in her certificate of candidacy as Kananga, Leyte. It was alleged that she was in fact a resident of Ormoc City like her husband who was earlier disqualified from running for the same office. The COMELEC dismissed the petition and referred the case to its Law Department for proper action on the ground that the petition was a violation of Section 74 of the Election Code and, pursuant to its rules, should be prosecuted as an election offense under Section 262 of the Code.

This Court reversed and set aside the COMELEC's ruling, to wit:

"The Court holds that the dismissal was improper. The issue of residence having been squarely raised before it, it should not have been shunted aside to the Law Department for a roundabout investigation of the private respondent's qualification through the filing of a criminal prosecution, if found to be warranted, with resultant disqualification of the accused in case of conviction. The COMELEC should have opted for a more direct and speedy process available under the law, considering the vital public interest involved and the necessity of resolving the question of the earliest possible time for the benefit of the inhabitants of Leyte.

In the view of the Court, the pertinent provision is Section 78 in relation to Section 6 of R.A. No. 6646.

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

Section 6 of R.A. 6646 states as follows:

Effect of Disqualification Case. — Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong.

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The above-stressed circumstances should explain the necessity for continuing the investigation of the private respondent's challenged disqualification even after the election notwithstanding that such matter is usually resolved before the election. Independently of these circumstances, such proceedings are allowed by Section 6 of R.A. 6646 if for any reason a candidate is not declared by final judgment before an election to be disqualified x x x."

In fine, the Court directed the COMELEC to determine the residence qualification of petitioner Larrazabal in SPC Case No. 88-546. Concomitant with this directive would be the disqualification of petitioner Larrazabal in the event that substantial evidence is adduced that she really lacks the residence provided by law to qualify her to run for the position of governor in Leyte.

In line with the Court's directive, the COMELEC conducted hearings in SPC Case No. 88-546 to resolve the qualification of Larrazabal on the basis of two (2) legal issues raised by Silvestre T. de la Cruz namely, Larrazabal's lack of legal residence in the province of Leyte and her not being a registered voter in the province, as required by Title II, Chapter I, Section 42, B. P. Blg. 337, in relation to Article X, Section 12 of the Constitution, to wit:

"Sec. 42. Qualification. — (1) An elective local official must be a citizen of the Philippines, at least twenty-three years of age on election day, a qualified voter registered as such in the barangay, municipality, city or province where he proposes to be elected, a resident therein for at least one year at the time of the filing of his certificate of candidacy, and able to read and write English, Pilipino, or any other local language or dialect.

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Sec. 12. Cities that are highly urbanized, as determined by law, and component cities whose charters prohibit their voters from voting for provincial elective officials, shall be independent of the province. The voters of component cities within a province, whose charters contain no such prohibition, shall not be deprived of their right to vote for elective provincial officials."

The position of petitioners De la Cruz and Abella was that respondent Larrazabal is neither a resident nor a registered voter of Kananga, Leyte as she claimed but a resident and registered voter of Ormoc City, a component city of the province of Leyte but independent of the province pursuant to Section 12, Article X of the Constitution thereby disqualifying her for the position of governor of Leyte. They presented testimonial as well as documentary evidence to prove their stance.

On the other hand, respondent Larrazabal maintained that she was a resident and a registered voter of Kananga, Leyte. She, too presented testimonial as well as documentary evidence to prove her stand.

The COMELEC ruled against the respondent, now petitioner Larrazabal.

In its questioned decision and resolution, the COMELEC found that petitioner Larrazabal was neither a resident of Kananga, Leyte nor a registered voter thereat. With these findings, the COMELEC disqualified the petitioner as governor of the province of Leyte.

The petitioner, however, avers that the COMELEC decision is erroneous when it relied on the provisions of the Family Code to rule that the petitioner lacks the required residence to qualify her to run for the position of governor of Leyte. She opines that under "the Election Law, the matter of determination of the RESIDENCE is more on the principle of INTENTION, the animus revertendi, rather than anything else."

In this regard, she states that x x x "her subsequent physical transfer of residence to Ormoc City thereafter, did not necessarily erased (sic) or removed her Kananga residence, for as long as she had the ANIMUS REVERTENDI evidenced by her continuous and regular acts of returning there in the course of the years, although she had physically resided at Ormoc City." (Petition, Rollo, p. 40)

As can be gleaned from the questioned decision, the COMELEC based its finding that the petitioner lacks the required residence on the evidence of record to the effect that despite protestations to the contrary made by the petitioner, she has established her residence at Ormoc City from 1975 to the present and not at Kananga, Leyte. Her attempt to purportedly change her residence one year before the election by registering at Kananga, Leyte to qualify her to run for the position of governor of the province of Leyte clearly shows that she considers herself already a resident of Ormoc City. In the absence of any evidence to prove otherwise, the reliance on the provisions of the Family Code was proper and in consonance with human experience. The petitioner did not present evidence to show that she and her husband maintain separate residences, she at Kananga, Leyte and her husband at Ormoc City. The second division of the COMELEC in its decision dated February 14, 1991 states:

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"But there is the more fundamental issue of residence. The only indications of a change of residence so far as respondent is concerned are: the address indicated in the application for cancellation filed by respondent indicating her postal address as Kananga, Leyte, the annotation in her Voter's affidavit for Precinct No. 15 that her registration was cancelled due to lack of residence; the testimony of Anastacia Dasigan Mangbanag that she entered into a contract of lease with option to buy with the spouses Emeterio and Inday Larrazabal over two parcels of land the witness owned in Mahawan, Kananga, Leyte; that she sees the spouses in the leased house in Kananga, that she was informed by Inday Larrazabal that the spouses had decided to buy their property because she wanted to beautify the house for their residence. She attached as annex the written contract signed by her and the spouses; and the testimony of Adolfo Larrazabal Exh. "10" cousin of the spouses that 'at a family meeting... the political plan of the Larrazabal clan was discussed, among which were (sic) the problem of Terry's residence in Ormoc City,' and that 'it was decided in said meeting ... that Inday Larrazabal, wife of Terry, will transfer her Ormoc Registration as a voter to Kananga, Leyte (so) she will be able to vote for Terry and also help me in my candidacy; that they have been staying in Kananga, very often as they have properties in Lonoy and a house in Mahawan.

The references to residence in the documents of cancellation and registration are already assessed for their evidentiary value in relation to the documents themselves above. The question must therefore be addressed in relation to the testimony of Anastacia Dasigan Mangbanag and Adolfo V. Larrazabal. The gist of the testimonies is that they leased properties in Mahawan, Leyte and that they are seen in the house on the land leased. But the contract of lease with option to purchase itself indicates as to where the legal residence of the Larrazabals is. The pertinent portion states:

SPS. EMETERIO V. LARRAZABAL AND ADELINA Y. LARRAZABAL, both of legal age, Filipino, and residents of Ormoc City, Philippines, hereinafter referred to as the LESSEES.

The acknowledgment also indicates that Emeterio V. Larrazabal presented his Residence Certificate No. 155774914 issued in Ormoc City.

The testimony of Adolfo Larrazabal reinforces this conclusion. It admits, as of the second or third week of November, that the residence of Emeterio Larrazabal was Ormoc City and that Inday Larrazabal was going to transfer her registration so she may be able to vote for him.

For the purpose of running for public office, the residence requirement should be read as legal residence or domicile, not any place where a party may have properties and may visit from time to time.

The Civil Code is clear that '[F]or the exercise of civil rights and the fulfillment of civil obligations, the domicile of natural persons is the place of their habitual residence.'

Arts. 68 and 69 of the Family Code, E. O. No. 209 also provide as follows:

Art. 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

Art. 69. The husband and wife shall fix the family domicile. In case of disagreement, the court shall decide. The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family.

Husband and wife as a matter of principle live together in one legal residence which is their usual place of abode." (COMELEC decision, pp. 21-23; Rollo — 100710, pp. 67--69; italics supplied)

As regards the principle of ANIMUS REVERTENDI, we ruled in the case of *Faypon v. Quirino*, 96 Phil. 294 [1954]):

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"x x x [M]ere absence from one's residence or origin — domicile — to pursue studies, engage in business, or practice his avocation, is not sufficient to constitute abandonment or loss of such residence." x x x The determination of a person's legal residence or domicile largely depends upon intention which may be inferred from his acts, activities and utterances. The party who claims that a person has abandoned or left his residence or origin must show and prove preponderantly such abandonment or loss.

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x x x A citizen may leave the place of his birth to look for 'greener pastures' as the saying goes, to improve his life, and that, of course, includes study in other places, practice of his avocation, or engaging in business. When an election is to be held, the citizen who left his birthplace to improve his lot may desire to return to his native town to cast his ballot but for professional or business reasons, or for any other reason, he may not absent himself from the place of his professional or business activities; so there be registers as voter as he has the qualifications to be one and is not willing to give up or lose the opportunity to choose the officials who are to run the government especially in national elections. Despite such registration, the animus revertendi to his home, to his domicile or residence of origin, has not forsaken him. x x x." (at pp. 297-300)

In the instant case, there is no evidence to prove that the petitioner temporarily left her residence in Kananga, Leyte in 1975 to pursue any calling, profession or business. What is clear is that she established her residence in Ormoc City with her husband and considers herself a resident therein. The intention of animus revertendi not to abandon her residence in Kananga, Leyte therefor, is not present. The fact that she occasionally visits Kananga, Leyte through the years does not signify an intention to continue her residence therein. It is common among us

Filipinos to often visit places where we formerly resided specially so when we have left friends and relatives therein although for intents and purposes we have already transferred our residence to other places.

Anent the issue of whether or not the petitioner is a registered voter of Kananga, Leyte, the petitioner insists that she is such a registered voter based on the following antecedents: 1) She cancelled her registration in Ormoc City on November 25, 1987, and 2) she then transferred her registration to Kananga, Leyte on November 25, 1987 by registering thereat and 3) she later voted on election day (February 1, 1988) in Kananga, Leyte.

Despite the insistence of the petitioner, the evidence shows that her supposed cancellation of registration in Ormoc City and transfer of registration in Kananga, Leyte, is not supported by the records. As the COMELEC stated:

"The train of events, which led to respondent's filing of her certificate of candidacy on the basis of her registration started on November 25, 1987, when she allegedly filed an application for cancellation of registration Exh. "2-B". Subsequent to this request, her voter's affidavit in Precinct 15, Ormoc City with Serial No. 0918394 J was annotated with the words 'cancelled upon application of the voter due to transfer of residence.' Thereafter, she registered in Precinct No. 17, Mahawan, Kananga, Leyte on November 28, 1987 which registration was contained in Voter's Affidavit with Serial No. 0190840-J. The cancellation of registration was submitted to the Board of Election Inspectors on January 9, 1988 (Revision Day) on the submission of the sworn application at 4:30 p.m. allegedly by a clerk from the Election Registrar's Office with only the poll clerk and the third member because the Chairman of the Board of Election Inspectors allegedly left earlier and did not come back. Exh. "3-B".

We find the version pressed by respondent unworthy of belief. The story is marked by so many bizarre circumstances not consistent with the ordinary course of events or the natural behavior of persons. Among these are:

- (1) The application for cancellation of registration by respondent Adelina Y. Larrazabal happened to be misplaced by a clerk in the Election Registrar's Office for Ormoc City so it was not sent to the Board of Election Inspectors in a sealed envelope;
- (2) The 'inadvertentment' (sic) misplacement was discovered only on January 9, 1988;
- (3) The voter's affidavit was delivered by itself without any endorsement or covering letter from the Election Registrar or anybody else;
- (4) The election clerk delivered the application for cancellation only towards the last hour of the revision day, allegedly at 4:30 P.M., January 9, 1988;
- (5) All the members of the Board of Election Inspectors had already signed the Minutes indicating that no revision of the voter's list was made as of 5:00 P.M.;
- (6) The poll clerk and the third member prepared another minutes stating that the election clerk had delivered the application for cancellation at 4:30 P.M. without any reference to the minutes they had previously signed;
- (7) Emeterio Larrazabal, who was supposed to have registered in Precinct 17, Mahawan, Kananga, was supposed to have filled up an application for cancellation of his registration in Precinct No. 15, Ormoc City at Precinct 17 concurrent with his registration. This application for cancellation was never submitted in evidence.
- (8) The serial number of the voter's affidavits of the spouses Larrazabal in Precinct No. 17 are far removed from the serial numbers of the other new registrants in November 28, 1987 in the same precinct.

The most telling evidence is the list of voters (Form 2-A), Exh. "G", that the Chairman and the poll clerk had written in Part II of the same, closed by the signatures of both officials showing that there were only nine (9)

additional registered voters in Precinct 17, Mahawan, Kananga, Leyte, namely, Bantasan, Merly; Conje, Isagani; Limosnero, Anita; Limosnero, Wilfredo; Pame, Virginia; Savenario, Analiza; Verallo, Ofelia; Basan, Juanita; and Aclang, Bonifacio. This is consistent with the list of new voters after the November 28, 1987 for Precinct No. 17, Mahawan, Kananga, Leyte submitted by the Election Registrar of Kananga to the National Central File of the Commission per certification of the Chief, National Central File Division on January 25, 1988 dated January 25, 1988, Exh. "C". The affidavits submitted by the Election Registrar to the Commission could only have come from the Board of Election Inspectors of Precinct No. 17, after the November 28, 1987 registration, for the Election Registrar could not have had the affidavits of these new registrants apart from those supplied by the Precinct itself. Why were not the affidavits of the Larrazabals included? Was this part of the incredibly bizarre series of inadvertence and neglect that spanned Ormoc City and Kananga? This also explains the certification dated January 29, 1988, of the Election Registrar of Kananga that as of that date Mrs. Adelina Larrazabal was not a registered voter in any of the precincts in Kananga. Exh. "L". It was only on February 15, 1988, or two weeks after the election day that the same Registrar certified for the first time that there were two voters lists, the first without the names of the Larrazabals and the second, which appeared only after February 1, submitted by the Chairman of the Board for Precinct 17 which contained the spouses Larrazabals' names.

It might also be stressed that one set of voter's list Exh. "G" had the signature of both the Chairman, poll clerk and third member of the board, while the one which appeared later which included the names of the Larrazabal had the signature only of the Chairman. Exh. "T".

From the certification of the National Central Files, it appears that the Serial Nos. of the newly registered voters were as follows: 0189821-J; 018922-J; 0189823-J; 0189824-J; 0189825-J; 0189826-J; 0189827-J; 0189828-J; 0189839-J. The alleged registration of Emeterio V. Larrazabal and Adelina Y. Larrazabal are inexplicably effected through voter's affidavits with Serial Nos. 0190893-J and 0190840-J. These serial numbers are traced per record of the Commission to Precinct No. 6, municipality of Kananga, Leyte. Per official project of precincts on file with the Commission, Precinct No. 6 is a poblacion precinct located in Kananga, Municipal High School Building. How these documents came to be used in Precinct No. 17 in Barangay Mahawan and only by the Larrazabals has never been explained.

It also takes a lot of straining to believe the story about the effort to cancel registration on November 25, 1987, which application surfaced before the Board of Election Inspectors for Precinct No. 15, Ormoc City only on January 9, 1988, Revision Day. As pointed out by petitioner, it is absurd that it would only be on Revision Day, normally set aside for the purpose of receiving inclusion and exclusion orders from the courts, that the application for cancellation would be coincidentally found and delivered to the Board of Election Inspectors for Precinct 15. Furthermore, the entire membership of the Board of Inspectors for said precinct, signed a Minutes, Exh. "3-A" which indicates that no order of inclusion or exclusion was received from any court and that the board proceeded with the numbering of a total 229 voters for the precinct. The Minutes also indicates that the Board adjourned at 5:00 p.m. Exh. "3-B" which was supposedly prepared after Exh. "3-A" signed only by the poll clerk and third member indicates that at 4:30 P.M. an unidentified clerk from the Election Registrar's Office arrived with the application for cancellation of Vilma Manzano and Adelina Larrazabal.

It also appears that on November 28, 1987, the Board of Election Inspectors for Precinct 15, Ormoc City prepared the list of voters for said precinct, Exh. "N" where the name of Adelina Y. Larrazabal appears as voter No. 96 and Emeterio V. Larrazabal is listed as Voter No. 98. At the back of the list there is a certification that there was no voter which was included by court order and that two voters, one Montero and one Salvame were excluded by virtue of such order. As of January 29, 1988, when the certified true copy of the Voter's List for Precinct 15 was furnished the petitioner, no additional entry was reflected on the list which would show what transpired on January 9, 1988, as alleged by the Election Registrar for Ormoc City and the poll clerk and third member of the board of inspectors that a cancellation was effected. It taxes credulity, therefore, to lend belief to Exh. "2-C". which was issued by the City Registrar for Ormoc only on February 1, 1990, which for

the first time showed handwritten annotations of cancellation of the registration of Adelina Larrazabal and Vilma Manzano by witnesses Gratul and Paton-og. If this evidence did exist at the time of the entry which purports to have been on January 9, 1988, this evidence could have been used to confront witnesses Carolina Quezon when she testified and identified Exh. "N" on April 14, 1988. In fact if these entries indicating (sic) were made, they would have been evident in Exh. "N". The failure to confront Quezon with the entries and the late submission of Exh. "2-C" can only lead to two conclusions: these entries did not exist as of January 29, 1988 when the certification of the list of voters was made and that they were annotated in the voter's list after that date. This is consistent with Exh. "P" which was issued on February 11, 1988.

The relative weight of the parties' evidence supports petitioner's thesis that respondent was not a registered voter in Precinct No. 17, Brgy. Mahawan, Kananga, Leyte, and, that she and her husband Emeterio Larrazabal continued to be registered voters in Precinct No. 15, Ormoc City." (Rollo, pp. 62-67; COMELEC decision, pp. 22-27)

The Court is bound by these factual findings as they are supported by substantial evidence:

In *Aratuc v. Commission on Elections* (88 SCRA 251), speaking of the need to preserve the 'independence and all the needed concomitant powers' of the Commission on Elections, Justice Antonio P. Barreto declared that 'it is but proper that the Court should accord the greatest measures of presumption of regularity to its course of action x x x to the end it may achieve its designed place in the democratic fabric of our government.' x x x." *Abella v. Larrazabal*, supra)

Failing in her contention that she is a resident and registered voter of Kananga, Leyte, the petitioner poses an alternative position that her being a registered voter in Ormoc City was no impediment to her candidacy for the position of governor of the province of Leyte.

Section 12, Article X of the Constitution provides:

"Cities that are highly urbanized, as determined by law, and component cities whose charters prohibit their voters from voting for provincial elective officials, shall be independent of the province. The voters of component cities within a province, whose charters contain no such prohibition, shall not be deprived of their right to vote for elective provincial officials."

Section 89 of Republic Act No. 179 creating the City of Ormoc provides:

"Election of provincial governor and members of the Provincial Board of the Province of Leyte — The qualified voters of Ormoc City shall not be qualified and entitled to vote in the election of the provincial governor and the members of the provincial board of the Province of Leyte."

Relating therefore, section 89 of R. A. 179 to section 12, Article X of the Constitution one comes up with the following conclusion: that Ormoc City when organized was not yet a highly-urbanized city but is, nevertheless, considered independent of the province of Leyte to which it is geographically attached because its charter prohibits its voters from voting for the provincial elective officials. The question now is whether or not the prohibition against the 'city's registered voters' electing the provincial officials necessarily means a prohibition of the registered voters to be elected as provincial officials.

The petitioner citing section 4, Article X of the Constitution, to wit:

"Sec. 4. The President of the Philippines shall exercise general supervision over local governments. Provinces with respect to component cities and municipalities and cities and municipalities with respect to component barangays, shall ensure that the acts of their component units are within the scope of their prescribed powers and functions."

submits that "while a Component City whose charter prohibits its voters from participating in the elections for

provincial office, is indeed independent of the province, such independence cannot be equated with a highly urbanized city; rather it is limited to the administrative supervision aspect, and nowhere should it lead to the conclusion that said voters are likewise prohibited from running for the provincial offices." (Petition, p. 29)

The argument is untenable.

Section 12, Article X of the Constitution is explicit in that aside from highly-urbanized cities, component cities whose charters prohibit their voters from voting for provincial elective officials are independent of the province. In the same provision, it provides for other component cities within a province whose charters do not provide a similar prohibition. Necessarily, component cities like Ormoc City whose charters prohibit their voters from voting for provincial elective officials are treated like highly urbanized cities which are outside the supervisory power of the province to which they are geographically attached. This independence from the province carries with it the prohibition or mandate directed to their registered voters not to vote and be voted for the provincial elective offices. The resolution in G. R. No. 80716 entitled "Peralta v. The Commission on Elections, et al." dated December 10, 1987 applies to this case. While the cited case involves Olongapo City which is classified as a highly urbanized city, the same principle is applicable.

Moreover, Section 89 of Republic Act 179, independent of the constitutional provision, prohibits registered voters of Ormoc City from voting and being voted for elective offices in the province of Leyte. We agree with the COMELEC en banc that "the phrase 'shall not be qualified and entitled to vote in the election of the provincial governor and the members of the provincial board of the Province of Leyte' connotes two prohibitions — one, from running for and the second, from voting for any provincial elective official." (Resolution En Banc, p. 6)

The petitioner takes exception to this interpretation. She opines that such interpretation is "wrong English" since nowhere in the provision is there any reference to a prohibition against running for a provincial elective office. She states that if the prohibition to run was indeed intended, the provision should have been phrased "Shall not be qualified TO RUN in the election FOR provincial governor." A comma should have been used after the word qualified and after the word "vote" to clearly indicate that the phrase "in the election of the provincial governor" is modified separately and distinctly by the words "not qualified" and the words "not entitled to vote." (Petition, p. 19).

The Court finds the petitioner's interpretation fallacious.

In the case of Mapa v. Arroyo (175 SCRA 76 [1989]) this Court interpreted section 20 of Presidential Decree No. 957 in relation to the conjunction and, to wit:

"Time of Completion.— Every owner or developer shall construct and provide the facilities, improvements, infrastructures and other forms of development, including water supply and lighting facilities, which are offered and indicated in the approved subdivision or condominium plans x x x."

The Court ruled:

"We further reject petitioner's strained and tenuous application of the so-called doctrine of last antecedent in the interpretation of Section 20 and, correlatively, of Section 21. He would thereby have the enumeration of 'facilities, improvements, infrastructures and other forms of development' interpreted to mean that the demonstrative phrase 'which are offered and indicated in the approved subdivision plans, etc.' refer only to 'other forms of development' and not to 'facilities, improvements and infrastructures.' While this subserves his purpose, such bifurcation, whereby the supposed adjective phrase is set apart from the antecedent words, is illogical and erroneous. The complete and applicable rule is *ad proximum antedecens fiat relatio nisi impediatur sententia*. (See Black's Law Dictionary, 4[th] Ed., 57 citing *Brown v. Brown*, Del., 3 Terry 157, 29 A. 2d 149, 153). Relative words refer to the nearest antecedent, unless it be prevented by the context. In the

present case, the employment of the word 'and' between 'facilities, improvements, infrastructures' and 'other forms of development,' far from supporting petitioner's theory, enervates it instead since it is basic in legal hermeneutics that 'and' is not meant to separate words but is a conjunction used to denote a joinder or union." (at pp. 81-83)

Applying these principles to the instant case, the conjunction and between the phrase shall not be qualified and entitled to vote refer to two prohibitions as ruled by the COMELEC in relation to the demonstrative phrase "in the election of the provincial governor and the members of the provincial board of the Province of Leyte."

Finally, the petitioner contends that the February 14, 1991 decision of the COMELEC's second division is null and void on the ground that on that date, the term of Commissioner Andres Flores, one of the signatories of the majority opinion (vote was 2-1) had already expired on February 2, 1991. Commissioner Flores was nominated by the President on January 30, 1988 and was confirmed by the Commission on Appointments on February 15, 1988. His term of office was fixed by the President for three years from February 15, 1988 to February 15, 1991.

The petitioner postulates that the President has no power to fix the terms of office of the Commissioners of the COMELEC because the Constitution impliedly fixes such terms of office. With regards to Commissioner Flores, the petitioner professes that Flores' term of three (3) years expired on February 2, 1991 based in section I(2), Article IX, C, of the Constitution, to wit:

xxx xxx xxx

"(2) The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, three Members shall hold office for seven years, two Members for five years, and the last Members for three years, without reappointment. Any appointment to any vacancy shall be only for the unexpired term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity."

in relation to the Transitory Provision of the 1987 Constitution (Article XVIII) particularly Section 15 thereof, to wit:

xxx xxx xxx

"The incumbent Members of the Civil Service Commission, the Commission on Elections, and the Commission on Audit shall continue in office for one year after the ratification of this Constitution, unless they are sooner removed for cause or become incapacitated to discharge the duties of their office or appointed to a new term thereunder. In no case shall any Member serve longer than seven years including service before the ratification of this Constitution."

There is no need to pass upon this constitutional issue raised by the petitioner. The Court ruled in the case of *Alger Electric, Inc. v. Court of Appeals* (135 SCRA 37 [1985]):

xxx xxx xxx

"x x x This Court does not decide questions of a constitutional nature unless absolutely necessary to a decision of the case. If there exists some other ground based on statute or general law or other grounds of construction, we decide the case on a non-constitutional determination. (See *Burton v. United States*, 196 U.S. 283; *Siler v. Lousville & Nashville R. Co.* 213 U.S. 175; *Berea College v. Kentucky* 211 U.S. 45.)" (at p. 45)

Even if we concede that Commissioner Flores' term expired on February 2, 1991, we fail to see how this could validate the holding of an elective office by one who is clearly disqualified from running for that position and the continued exercise of government powers by one without legal authority to do so. The powers of this Court are broad enough to enjoin the violation of constitutional and statutory provisions by public officers especially where,

as in this case, we merely affirm the decision of the COMELEC en banc promulgated at a time when Commissioner Flores was no longer a member.

Moreover, under the peculiar circumstances of this case, the decision of the second division of COMELEC would still be valid under the de facto doctrine.

Commissioner Flores was appointed for a three year term from February 15, 1988 to February 15, 1991. In these three years he exercised his duties and functions as Commissioner. Granting in the absence of a statute expressly stating when the terms of the COMELEC Chairman and members commence and expire, that his term expired on February 2, 1991 to enable a faithful compliance with the constitutional provision that the terms of office in the COMELEC are on a staggered basis commencing and ending at fixed intervals, his continuance in office until February 15, 1991 has a color of validity. Therefore, all his official acts from February 3, 1991 to February 15, 1991, are considered valid. The Court ruled in the case of *Leyte Acting Vice-Governor Aurelio D. Menzon v. Leyte Acting Governor Leopoldo E. Petilla, et al.* G. R. No. 90762, May 20, 1991:

"And finally, even granting that the President, acting through the Secretary of Local Government, possesses no power to appoint the petitioner, at the very least, the petitioner is a de facto officer entitled to compensation.

There is no denying that the petitioner assumed the Office of the Vice-Governor under color of a known appointment. As revealed by the records, the petitioner was appointed by no less than the alter ego of the President, the Secretary of Local Government, after which he took his oath of office before Senator Alberto Romulo in the Office of Department of Local Government Regional Director Res Salvatierra.

Concededly, the appointment has the color of validity."

Petitioner Benjamin P. Abella in G. R. No. 100710 obtained the second highest number of votes, next to Larrazabal in the local elections of February 1, 1988 in the province of Leyte. The COMELEC en banc, after affirming the February 14, 1991 decision of its second division disqualifying Larrazabal as governor disallowed Abella from assuming position of governor in accordance with section 6, Republic Act No. 6646 and the rulings in the cases of *Frivaldo v. Commission on Elections* (174 SCRA 245 (1989)) and *Labo, Jr. v. Commission on Elections* (176 SCRA 1 [1989]).

Abella claims that the *Frivaldo* and *Labo* cases were misapplied by the COMELEC. According to him these cases are fundamentally different from SPC No. 88-546 in that the *Frivaldo* and *Labo* cases were petitions for quo warranto filed under section 253 of the Omnibus Code, contesting the eligibility of the respondents after they had been proclaimed duly elected to the Office from which they were sought to be unseated while SPC No. 88-546 which was filed before proclamation under section 78 of the Omnibus Election Code sought to deny due course to Larrazabal's certificate of candidacy for material misrepresentations and was seasonably filed on election day. He, therefore, avers that since under section 6 of Republic Act 6646 it is provided therein that:

"Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted."

the votes cast in favor of Larrazabal who obtained the highest number of votes are not considered counted making her a non-candidate, he, who obtained the second highest number of votes should be installed as regular Governor of Leyte in accordance with the Court's ruling in G. R. No. 88004.

The petitioner's arguments are not persuasive.

While it is true that SPC No. 88-546 was originally a petition to deny due course to the certificate of candidacy of Larrazabal and was filed before Larrazabal could be proclaimed the fact remains that the local elections of February 1, 1988 in the province of Leyte proceeded with Larrazabal considered as a bona-fide candidate. The

voters of the province voted for her in the sincere belief that she was a qualified candidate for the position of governor. Her votes were counted and she obtained the highest number of votes. The net effect is that the petitioner lost in the election. He was repudiated by the electorate. In the Frivaldo and Labo cases, this is precisely the reason why the candidates who obtained the second highest number of votes were not allowed to assume the positions vacated by Frivaldo — the governorship of Sorsogon, and Labo, the position of mayor in Baguio City. The nature of the proceedings therefore, is not that compelling. What matters is that in the event a candidate for an elected position who is voted for and who obtains the highest number of votes is disqualified for not possessing the eligibility requirements at the time of the election as provided by law, the candidate who obtains the second highest number of votes for the same position can not assume the vacated position. It should be stressed that in G. R. No. 88004, the Court set aside the dismissal of SPC No. 88-546, and directed the COMELEC to conduct hearings to determine whether or not Larrazabal was qualified to be a candidate for the position of governor in the province of Leyte. This is the import of the decision in G. R. No. 88004. Thus, the court ruled in the case of Labo, Jr. v. Commission on Elections:

"Finally, there is the question of whether or not the private respondent, who filed the quo warranto petition, can replace the petitioner as mayor. He cannot. The simple reason is that as he obtained only the second highest number of votes in the election, he was obviously not the choice of the people of Baguio City.

The latest ruling of the Court on this issue is Santos v. Commission on Elections, (137 SCRA 740) decided in 1985. In that case, the candidate who placed second was proclaimed elected after the votes for his winning rival, who was disqualified as a turncoat and considered a non-candidate, were all disregarded as stray. In effect, the second placer won by default. That decision was supported by eight members of the Court then, (Cuevas, J., ponente, with Makasiar, Concepcion, Jr., Escolin, Relova, De la Fuente, Alampay and Aquino, JJ., concurring.) with three dissenting (Teehankee, Acting C. J., Abad Santos and Melencio-Herrera, JJ.) and another two reserving their vote. (Plana and Gutierrez, Jr., JJ.) One was on official leave. (Fernando, C. J.)

Re-examining that decision, the Court finds, and so holds, that it should be reversed in favor of the earlier case of Geronimo v. Ramos, (136 SCRA 435) which represents the more logical and democratic rule. That case, which reiterated the doctrine first announced in 1912 in Topacio v. Paredes, (23 Phil. 238) was supported by ten members of the Court, (Gutierrez, Jr., ponente, with Teehankee, Abad Santos, Melencio-Herrera, Plana, Escolin, Relova, De la Fuente, Cuevas and Alampay, JJ., concurring) without any dissent, although one reserved his vote, (Makasiar, J.) another took no part, (Aquino, J.) and two others were on leave. (Fernando, C. J. and Concepcion, Jr., J) There the Court held:

'x x x it would be extremely repugnant to the basic concept of the constitutionally guaranteed right to suffrage if a candidate who has not acquired the majority or plurality of votes is proclaimed a winner and imposed as the representative of a constituency, the majority of which have positively declared through their ballots that they do not choose him.

Sound policy dictates that public elective offices are filled by those who have received the highest number of votes cast in the election for that office, and it is a fundamental idea in all republican forms of government that no one can be declared elected and no measure can be declared carried unless he or it receives a majority or plurality of the legal votes cast in the election. (20 Corpus Juris and, S 243, p. 676.)

The fact that the candidate who obtained the highest number of votes is later declared to be disqualified or not eligible for the office to which he was elected does not necessarily entitle the candidate who obtained the second highest number of votes to be declared the winner of the elective office. The votes cast for a dead, disqualified, or non-eligible person may not be valid to vote the winner into office or maintain him there. However, in the absence of a statute which clearly asserts a contrary political and legislative policy on the matter, if the votes were cast in the sincere belief that the candidate was alive, qualified, or eligible, they should not be treated as stray, void or meaningless.'" (at pp. 20-21)

In sum, the Court does not find any reason to reverse and set aside the questioned decision and resolution of the COMELEC. The COMELEC has not acted without or in excess of jurisdiction or in grave abuse of discretion.

WHEREFORE, the instant petitions are DISMISSED. The questioned decision of the second division of the Commission on Elections dated February 14, 1991 and the questioned Resolution en banc of the Commission dated July 18, 1991 are hereby AFFIRMED. The temporary restraining order issued on August 1, 1991 is LIFTED. Costs against the petitioners.

SO ORDERED.

Narvasa, Melencio-Herrera, Cruz, Paras, Padilla, Bidin, Grino-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.

Fernan, C.J., no part due to close personal relationship with one of the parties.

Feliciano and Sarmiento, JJ., on leave.

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