

MELANIO D. SAMPAYAN, DIEGO L. TURLA, JR., AND LEONARDO G. TIOZON, PETITIONERS, VS. RAUL A. DAZA, HON. CAMILO SABIO, AS SECRETARY OF THE HOUSE OF REPRESENTATIVES, MR. JOSE MARIA ...

G.R. No. 103903. September 11, 1992

Ponente: ROMERO, J.

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ROMERO, J.:

On February 18, 1992, petitioners, residents of the second Congressional District of Northern Samar filed the instant petition for prohibition seeking to disqualify respondent RaulDaza, then incumbent congressman of the same congressional district, from continuing to exercise the functions of his office, on the ground that the latter is a greencard holder and a lawful permanent resident of the United States since October 16, 1974.

Petitioners allege that Mr. Daza has not, by any act or declaration, renounced his status as permanent resident, thereby violating Section 68 of Batas Pambansa Bilang 881 (Omnibus Election Code) and Section 18, Article XI of the 1987 Constitution.

On February 25, 1992, we required respondents to comment. On March 13, 1992, respondents, through the Solicitor General, filed a motion for extension of time to file their comment for a period of thirty days or until April 12, 1992. Reacting to the said motion, petitioners on March 30, 1992, manifested their opposition to the 30-day extension of time stating that such extension was excessive and prayed that respondent instead be granted only 10 days to file their comment. On May 5, 1992, the Court noted the manifestation and opposition.

On April 7, 1992, petitioners manifested before us that on April 2, 1992, they filed a petition before the COMELEC to disqualify respondent Daza from running in the recent May 11, 1992 elections on the basis of Section 68 of the Omnibus Election Code (SPC 92-084) and that the instant petition is concerned with the unlawful assumption of office by respondent Daza from June 30, 1987 until June 30, 1992.[1]

On April 10, 1992, respondent Congressman Daza filed his comment denying the fact that he is a permanent resident of the United States; that although he was accorded a permanent residency status on October 8, 1980 as evidenced by a letter order of the District Director, US Immigration and Naturalization Service, Los Angeles, U.S.A.,[2] he had long waived his status when he returned to the Philippines on August 12, 1985.[3]

On April 13, 1992, public respondent Camilo Sabio, Secretary General of the House of Representatives, Mr. Jose Mari Tuaño, as OIC of the General Services Division, Mrs. Rosalinda G. Medina, as Chief Accountant of the House of Representatives and Commission on Audit, filed their comment. They contend that if indeed Congressman Daza is a greencard holder and a permanent resident of the United States of America, then he should be removed from his position as Congressman. However, they opined that only Congressman Daza can best explain his true and correct status as a greencard holder. Until he files his comment to the petition, petitioners' prayer for temporary restraining order and/or writ of preliminary injunction should not be granted.[4]

Eight (8) days later, respondent Daza, reacting to the petition before the COMELEC (SPC 92-084) and hypothesizing that the case before the COMELEC would become moot should this Court find that his permanent resident status ceased when he was granted a US non-immigrant visa, asked this Court to direct the COMELEC to dismiss SPC No. 92-084.[5]

On May 5, 1992, petitioners filed their reply. On May 21, 1992, this Court gave due course to the petition and required the parties to file their respective memoranda.

The central issue to be resolved in this case is whether or not respondent Daza should be disqualified as a member of the House of Representatives for violation of Section 68 of the Omnibus Election Code.

Petitioners insist that Congressman Daza should be disqualified from exercising the functions of his office being a permanent resident alien of the United States at the time when he filed his certificate of candidacy for the May 11, 1987 Elections. To buttress their contention, petitioners cite the recent case of *Caasi v. Court of Appeals*. [6]

In support of their charge that respondent Daza is a greencard holder, petitioners presented to us a letter from the United States Department of Justice, Immigration and Naturalization Service (INS) which reads:[7]

File No. A20 968 618

Date: Nov 5, 1991

LOS914732

Geraghty, O'Loughlin and Kenney

Attn: David C. Hutchinson

386 N. Wasbasha Street

St. Paul, Minn. 55102-1308

SUBJECT:

Daza, Raul A.

Your request was received in this office on _____; please note the paragraph(s) checked below:

xxx xxx xxx

10. [XX] Other remarks:

Service File A20 968 619 relating to Raul Daza reflects: subject became a Lawful Permanent Resident on Oct. 16, 1974. As far as we know subject (sic) still has his greencard. No he has not applied for citizenship.

Sincerely, (sic)

Sgd.

District Director

Form G-343 (Rev. 8-20-82)N

We vote to dismiss the instant prohibition case. First, this case is already moot and academic for it is evident from the manifestation filed by petitioners dated April 6, 1992[8] that they seek to unseat respondent from his position as Congressman for the duration of his term of office commencing June 30, 1987 and ending June 30, 1992. Secondly, jurisdiction of this case rightfully pertains to the House Electoral Tribunal. Under Section 17 of Article

VI of the 1987 Constitution, it is the House Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns and qualification of its members. Since petitioners challenge the qualifications of Congressman Daza, the appropriate remedy should have been to file a petition to cancel respondent Daza's certificate of candidacy before the election^[9] or a quo warranto case with the House Electoral Tribunal within ten (10) days after Daza's proclamation.^[10] Third, a writ of prohibition can no longer be issued against respondent since his term has already expired. A writ of prohibition is not intended to provide for acts already consummated.^[11] Fourth, as a de facto public officer,^[12] respondent cannot be made to reimburse funds disbursed during his term of office because his acts are as valid as those of a de jure officer. Moreover, as a de facto officer, he is entitled to emoluments for actual services rendered.^[13]

ACCORDINGLY, the Court Resolved to DISMISS the instant petition for being MOOT and ACADEMIC.

SO ORDERED.

Narvasa, C.J., Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., Nocon, and Bellosillo, JJ., concur. Gutierrez, Jr., Cruz, and Feliciano, JJ., on official leave.

Melo and Campos, Jr., JJ., no part.

[1] Rollo p. 43-44.

[2] Annex 1 of Comment, Rollo, p. 59.

[3] Rollo pp. 51-58.

[4] Rollo, pp. 46-49.

[5] Rollo, pp. 75-78.

[6] G.R. No. 88831, November 8, 1990, 191 SCRA 229.

[7] Annex "A" of Petition, Rollo, p. 19.

[8] Rollo, p. 44.

[9] 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 file 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.

[10] Rule 17. Quo Warranto. - A verified petition for quo warranto contesting the election of a Member of the House of Representatives on the ground of ineligibility or disloyalty to the Republic of the Philippines shall be filed by any voter within ten (10) days after the proclamation of the winner. (Revised Rules of the House of Representatives Electoral Tribunal [1991])

[11] Heirs of Eugenia V. Roxas, Inc. v. Intermediate Appellate Court, G. R. Nos. 67195, 78618, 78619-20, May 29, 1989, 173 SCRA 581.

[12] Under color of a known appointment or election, void because the officer was not eligible or because there was a want of power in the electing or appointing body, or by reasons of some defect or irregularity in its exercise, such as ineligibility, want of power, or defect being unknown to the public. (Underscoring supplied,

Martin, Administrative Law, Law on Public Officers and Election Law, p. 149.)

[13] Cantillo v. Arrieta, G. R. No. L-31444, November 13, 1974, 61 SCRA 55.

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