

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. HON. ROSALIO G. DE LA ROSA, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 28, MANILA AND JUAN G. FRIVALDO, RESPONDENTS.

G.R. No. 104654. June 06, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

In *Frivaldo v. Commission on Elections*, 174 SCRA 245 (1989), this Court declared private respondent, Juan G. Frivaldo, an alien and therefore disqualified from serving as Governor of the Province of Sorsogon.

Once more, the citizenship of private respondent is put in issue in these petitions docketed as G.R. No. 104654, G.R. No. 105715 and G.R. No. 105735. The petitions were consolidated since they principally involve the same issues and parties.

I

G. R. No. 104654

This is a petition for certiorari under Rule 45 of the Revised Rules of Court in relation to R.A. No. 5440 and Section 25 of the Interim Rules, filed by the Republic of the Philippines: (1) to annul the Decision dated February 27, 1992 of the Regional Trial Court, Branch 28, Manila, in SP Proc. No. 91-58645, which re-admitted private respondent as a Filipino citizen under the Revised Naturalization Law (C.A. No. 63 as amended by C.A. No. 473); and (2) to nullify the oath of allegiance taken by private respondent on February 27, 1992.

On September 20, 1991, petitioner filed a petition for naturalization captioned: "In the Matter of Petition of Juan G. Frivaldo to be Re-admitted as a Citizen of the Philippines under Commonwealth Act No. 63" (Rollo, pp. 17--23).

In an Order dated October 7, 1991 respondent Judge set the petition for hearing on March 16, 1992, and directed the publication of the said order and petition in the Official Gazette and a newspaper of general circulation, for three consecutive weeks, the last publication of which should be at least six months before the said date of hearing. The order further required the posting of a copy thereof and the petition in a conspicuous place in the Office of the Clerk of Court of the Regional Trial Court, Manila (Rollo, pp. 24-26).

On January 14, 1992, private respondent filed a "Motion to Set Hearing Ahead of Schedule," where he manifested his intention to run for public office in the May 1992 elections. He alleged that the deadline for filing the certificate of candidacy was March 15, one day before the scheduled hearing. He asked that the hearing set on March 16 be cancelled and be moved to January 24 (Rollo, pp. 27-28).

The motion was granted in an Order dated January 24, 1992, wherein the hearing of the petition was moved to February 21, 1992. The said order was not published nor a copy thereof posted.

On February 21, the hearing proceeded with private respondent as the sole witness. He submitted the following documentary evidence: (1) Affidavit of Publication of the Order dated October 7, 1991 issued by the publisher of The Philippine Star (Exh. "A"); (2) Certificate of Publication of the order issued by the National Printing Office (Exh. "B"); (3) Notice of Hearing of Petition (Exh. "B-1"); (4) Photocopy of a Citation issued by the National Press Club with private respondent's picture (Exhs. "C" and "C-2"); (5) Certificate of Appreciation issued by the Rotary Club of Davao (Exh. "D"); (6) Photocopy of a Plaque of Appreciation issued by the Republican College, Quezon City (Exh. "E"); (7) Photocopy of a Plaque of Appreciation issued by the Davao-Bicol Association (Exh. "F"); (8) Certification issued by the Records Management and Archives Office that the record of birth of private respondent was not on file (Exh. "G"); and (8) Certificate of Naturalization issued by the United States District Court (Exh. "H").

Six days later, on February 27, respondent Judge rendered the assailed Decision, disposing as follows:

"WHEREFORE, the petition is GRANTED. Petitioner JUAN G. FRIVALDO, is re-admitted as a citizen of the Republic of the Philippines by naturalization, thereby vesting upon him, all the rights and privileges of a natural born Filipino citizen" (Rollo, p. 33).

On the same day, private respondent was allowed to take his oath of allegiance before respondent Judge (Rollo, p. 34).

On March 16, a "Motion for Leave of Court to Intervene and to Admit Motion for Reconsideration" was filed by Quiterio H. Hermo. He alleged that the proceedings were tainted with jurisdictional defects, and prayed for a new trial to conform with the requirements of the Naturalization Law.

After receiving a copy of the Decision on March 18, 1992, the Solicitor General interposed a timely appeal directly with the Supreme Court.

G. R. No. 105715

This is a petition for certiorari, mandamus with injunction under Rule 65 of the Revised Rules of Court in relation to Section 5(2) of Article VIII of the Constitution with prayer for temporary restraining order filed by Raul R. Lee against the Commission on Elections (COMELEC) and private respondent, to annul the en banc Resolution of the COMELEC, which dismissed his petition docketed as SPC Case No. 92-273. The said petition sought to annul the proclamation of private respondent as Governor-elect of the Province of Sorsogon.

Petitioner was the official candidate of the Laban ng Demokratikong Pilipino (LDP) for the position of governor of the Province of Sorsogon in the May 1992 elections. Private respondent was the official candidate of the Lakas-National Union of Christian Democrats (Lakas-NUCD) for the same position.

Private respondent was proclaimed winner on May 22, 1992.

On June 1, petitioner filed a petition with the COMELEC to annul the proclamation of private respondent as Governor-elect of the Province of Sorsogon on the grounds: (1) that the proceedings and composition of the Provincial Board of Canvassers were not in accordance with law; (2) that private respondent is an alien, whose grant of Philippine citizenship is being questioned by the State in G.R. No. 104654; and (3) that private respondent is not a duly registered voter. Petitioner further prayed that the votes cast in favor of private respondent be considered as stray votes, and that he, on the basis of the remaining valid votes cast, be proclaimed winner.

On June 10, the COMELEC issued the questioned en banc resolution which dismissed the petition for having been filed out of time, citing Section 19 of R.A. No. 7166. Said section provides that the period to appeal a ruling

of the board of canvassers on questions affecting its composition or proceedings was three days.

In this petition, petitioner argues that the COMELEC acted with grave abuse of discretion when it ignored the fundamental issue of private respondent's disqualification in the guise of technicality.

Petitioner claims that the inclusion of private respondent's name in the list of registered voters in Sta. Magdalena, Sorsogon was invalid because at the time he registered as a voter in 1987, he was an American citizen.

Petitioner further claims that the grant of Filipino citizenship to private respondent is not yet conclusive because the case is still on appeal before us.

Petitioner prays for: (1) the annulment of private respondent's proclamation as Governor of the Province of Sorsogon; (2) the deletion of private respondent's name from the list of candidates for the position of governor; (3) the proclamation of the governor-elect based on the remaining votes, after the exclusion of the votes for private respondent; (4) the issuance of a temporary restraining order to enjoin private respondent from taking his oath and assuming office; and (5) the issuance of a writ of mandamus to compel the COMELEC to resolve the pending disqualification case docketed as SPA Case No. 92-016, against private respondent.

G. R. No. 105735

This is a petition for mandamus under Rule 65 of the Revised Rules of Court in relation to Section 5(2) of Article VIII of the Constitution, with prayer for temporary restraining order. The parties herein are identical with the parties in G. R. No. 105715.

In substance, petitioner prays for the COMELEC's immediate resolution of SPA Case No. 92-016, which is a petition for the cancellation of private respondent's certificate of candidacy filed on March 23, 1992 by Quiterio H. Hermo, the intervenor in G.R. No. 104654 (Rollo, p. 18).

The petition for cancellation alleged: (1) that private respondent is an American citizen, and therefore ineligible to run as candidate for the position of governor of the Province of Sorsogon; (2) that the trial court's decision re-admitting private respondent as a Filipino citizen was fraught with legal infirmities rendering it null and void; (3) that assuming the decision to be valid, private respondent's oath of allegiance, which was taken on the same day the questioned decision was promulgated, violated Republic Act No. 530, which provides for a two-year waiting period before the oath of allegiance can be taken by the applicant; and (4) that the hearing of the petition on February 27, 1992, was held less than four months from the date of the last publication of the order and petition. The petition prayed for the cancellation of private respondent's certificate of candidacy and the deletion of his name from the list of registered voters in Sta. Magdalena, Sorsogon.

In his answer to the petition for cancellation, private respondent denied the allegations therein and averred: (1) that Quiterio H. Hermo, not being a candidate for the same office for which private respondent was aspiring, had no standing to file the petition; (2) that the decision re-admitting him to Philippine citizenship was presumed to be valid; and (3) that no case had been filed to exclude his name as a registered voter.

Raul R. Lee intervened in the petition for cancellation of private respondent's certificate of candidacy (Rollo, p. 37).

On May 13, 1992, said intervenor urged the COMELEC to decide the petition for cancellation, citing Section 78 of the Omnibus Election Code, which provides that all petitions on matters involving the cancellation of a certificate of candidacy must be decided "not later than fifteen days before election," and the case of *Alonto v. Commission on Elections*, 22 SCRA 878 (1968), which ruled that all pre-proclamation controversies should be summarily decided (Rollo, p. 50).

The COMELEC concedes that private respondent has not yet reacquired his Filipino citizenship because the decision granting him the same is not yet final and executory (Rollo, p. 63). However, it submits that the issue of disqualification of a candidate is not among the grounds allowed in a pre-proclamation controversy, like SPC Case No. 92-273. Moreover, the said petition was filed out of time.

The COMELEC contends that the preparation for the elections occupied much of its time, thus its failure to immediately resolve SPA Case No. 92-016. It argues that under Section 5 of Rule 25 of the COMELEC Rules of Procedure, it is excused from deciding a disqualification case within the period provided by law for reasons beyond its control. It also assumed that the same action was subsequently abandoned by petitioner when he filed before it a petition for quo warranto docketed as EPC No. 92-35. The quo warranto proceedings sought private respondent's disqualification because of his American citizenship.

II

G. R. NO. 104654

We shall first resolve the issue concerning private respondent's citizenship.

In his comment to the State's appeal of the decision granting him Philippine citizenship in G.R. No. 104654, private respondent alleges that the precarious political atmosphere in the country during Martial Law compelled him to seek political asylum in the United States, and eventually to renounce his Philippine citizenship.

He claims that his petition for naturalization was his only available remedy for his reacquisition of Philippine citizenship. He tried to reacquire his Philippine citizenship through repatriation and direct act of Congress. However, he was later informed that repatriation proceedings were limited to army deserters or Filipino women who had lost their citizenship by reason of their marriage to foreigners (Rollo, pp. 49-50). His request to Congress for sponsorship of a bill allowing him to reacquire his Philippine citizenship failed to materialize, notwithstanding the endorsement of several members of the House of Representatives in his favor (Rollo, p. 51). He attributed this to the maneuvers of his political rivals.

He also claims that the re-scheduling of the hearing of the petition to an earlier date, without publication, was made without objection from the Office of the Solicitor General. He makes mention that on the date of the hearing, the court was jam-packed.

It is private respondents posture that there was substantial compliance with the law and that the public was well-informed of his petition for naturalization due to the publicity given by the media.

Anent the issue of the mandatory two-year waiting period prior to the taking of the oath of allegiance, private respondent theorizes that the rationale of the law imposing the waiting period is to grant the public an opportunity to investigate the background of the applicant and to oppose the grant of Philippine citizenship if there is basis to do so. In his case, private respondent alleges that such requirement may be dispensed with, claiming that his life, both private and public, was well-known. Private respondent cites his achievements as a freedom fighter and a former Governor of the Province of Sorsogon for six terms.

The appeal of the Solicitor General in behalf of the Republic of the Philippines is meritorious. The naturalization proceedings in SP Proc. No. 91-58645 was full of procedural flaws, rendering the decision an anomaly.

Private respondent, having opted to reacquire Philippine citizenship thru naturalization under the Revised Naturalization Law, is duty bound to follow the procedure prescribed by the said law. It is not for an applicant to decide for himself and to select the requirements which he believes, even sincerely, are applicable to his case and

discard those which he believes are inconvenient or merely of nuisance value. The law does not distinguish between an applicant who was formerly a Filipino citizen and one who was never such a citizen. It does not provide a special procedure for the reacquisition of Philippine citizenship by former Filipino citizens akin to the repatriation of a woman who had lost her Philippine citizenship by reason of her marriage to an alien.

The trial court never acquired jurisdiction to hear the petition for naturalization of private respondent. The proceedings conducted, the decision rendered and the oath of allegiance taken therein, are null and void for failure to comply with the publication and posting requirements under the Revised Naturalization Law.

Under Section 9 of the said law, both the petition for naturalization and the order setting it for hearing must be published once a week for three consecutive weeks in the Official Gazette and a newspaper of general circulation. Compliance therewith is jurisdictional (*Po Yi Bo v. Republic*, 205 SCRA 400 [1992]). Moreover, the publication and posting of the petition and the order must be in its full text for the court to acquire jurisdiction (*Sy v. Republic*, 55 SCRA 724 [1974]).

The petition for naturalization lacks several allegations required by Sections 2 and 6 of the Revised Naturalization Law, particularly: (1) that the petitioner is of good moral character; (2) that he resided continuously in the Philippines for at least ten years; (3) that he is able to speak and write English and any one of the principal dialects; (4) that he will reside continuously in the Philippines from the date of the filing of the petition until his admission to Philippine citizenship; and (5) that he has filed a declaration of intention or if he is excused from said filing, the justification therefor.

The absence of such allegations is fatal to the petition (*Po Yi Bi v. Republic*, 205 SCRA 400 [1992]).

Likewise, the petition is not supported by the affidavit of at least two credible persons who vouched for the good moral character of private respondent as required by Section 7 of the Revised Naturalization Law. Private respondent also failed to attach a copy of his certificate of arrival to the petition as required by Section 7 of the said law.

The proceedings of the trial court was marred by the following irregularities: (1) the hearing of the petition was set ahead of the scheduled date of hearing, without a publication of the order advancing the date of hearing, and the petition itself; (2) the petition was heard within six months from the last publication of the petition; (3) petitioner was allowed to take his oath of allegiance before the finality of the judgment; and (4) petitioner took his oath of allegiance without observing the two-year waiting period.

A decision in a petition for naturalization becomes final only after 30 days from its promulgation and, insofar as the Solicitor General is concerned, that period is counted from the date of his receipt of the copy of the decision (*Republic v. Court of First Instance of Albay*, 60 SCRA 195 [1974]).

Section 1 of R.A. No. 530 provides that no decision granting citizenship in naturalization proceedings shall be executory until after two years from its promulgation in order to be able to observe if: (1) the applicant has left the country; (2) the applicant has dedicated himself continuously to a lawful calling or profession; (3) the applicant has not been convicted of any offense or violation of government promulgated rules; and (4) the applicant has committed any act prejudicial to the interest of the country or contrary to government announced policies.

Even discounting the provisions of R.A. No. 530, the courts cannot implement any decision granting the petition for naturalization before its finality.

G. R. NO. 105715

In view of the finding in G.R. No. 104654 that private respondent is not yet a Filipino citizen, we have to grant the petition in G.R. No. 105715 after treating it as a petition for certiorari instead of a petition for mandamus. Said petition assails the en banc resolution of the COMELEC, dismissing SPC Case No. 92-273, which in turn is a petition to annul private respondent's proclamation on three grounds: 1) that the proceedings and composition of the Provincial Board of Canvassers were not in accordance with law; 2) that private respondent is an alien, whose grant of Filipino citizenship is being questioned by the State in G.R. No. 104654; and 3) that private respondent is not a duly registered voter. The COMELEC dismissed the petition on the grounds that it was filed outside the three-day period for questioning the proceedings and composition of the Provincial Board of Canvassers under Section 19 of R.A. No. 7166.

The COMELEC failed to resolve the more serious issue - the disqualification of private respondent to be proclaimed Governor on grounds of lack of Filipino citizenship. In this aspect, the petition is one for quo warranto. In *Frivaldo v. Commission on Elections*, 174 SCRA 245 (1989), we held that a petition for quo warranto, questioning the respondent's title and seeking to prevent him from holding office as Governor for alienage, is not covered by the ten-day period for appeal prescribed in Section 253 of the Omnibus Election Code. Furthermore, we explained that "qualifications for public office are continuing requirements and must be possessed not only at the time of appointment or election or assumption of office but during the officer's entire tenure; once any of the required qualification is lost, his title may be seasonably challenged."

Petitioner's argument, that to unseat him will frustrate the will of the electorate, is untenable. Both the Local Government Code and the Constitution require that only Filipino citizens can run and be elected to public office. We can only surmise that the electorate, at the time they voted for private respondent, was of the mistaken belief that he had legally reacquired Filipino citizenship.

Petitioner in G.R. No. 105715, prays that the votes cast in favor of private respondent be considered stray and that he, being the candidate obtaining the second highest number of votes, be declared winner. In *Labo, Jr. v. COMELEC*, 176 SCRA 1 (1989), we ruled that where the candidate who obtained the highest number of votes is later declared to be disqualified to hold the office to which he was elected, the candidate who garnered the second highest number of votes is not entitled to be declared winner (See also *Geronimo v. Ramos*, 136 SCRA 435 [1985]; *Topacio v. Paredes*, 23 Phil. 238 [1912]).

G.R. No. 105735

In view of the discussions of G.R. No. 104654 and G.R. No. 105715, we find the petition in G. R. No. 105735 moot and academic.

WHEREFORE, the petitions in G.R. No. 104654 and G.R. No. 105715 are both GRANTED while the petition in G.R. No. 105735 is DISMISSED. Private respondent is declared NOT a citizen of the Philippines and therefore DISQUALIFIED from continuing to serve as GOVERNOR of the Province of Sorsogon. He is ordered to VACATE his office and to SURRENDER the same to the Vice-Governor of the Province of Sorsogon once this decision becomes final and executory. No pronouncement as to costs.

SO ORDERED.

Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, and Kapunan, JJ., concur. Narvasa, C.J., and Cruz, J., no part.

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