

RAMON L. LABO, JR., PETITIONER, VS. COMMISSION ON ELECTIONS, AND ROBERTO ORTEGA, RESPONDENTS.

G.R. No. 105111. July 03, 1992

Ponente: BIDIN, J.

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BIDIN, J.:

This is the second time* that this Court is called upon to rule on the citizenship of Ramon Labo, Jr., who, believing that he is a Filipino citizen, launched his candidacy for mayor of Baguio City in the last May 11, 1992 elections by filing his certificate of candidacy on March 23, 1992.

Petitioner Roberto Ortega (GR No. 105384), on the other hand, also filed his certificate of candidacy for the same office on March 25, 1992.

Shortly after petitioner Labo filed his certificate of candidacy, petitioner Ortega filed on March 26, 1992, a disqualification proceeding against Labo before the Commission on Elections (Comelec), docketed as SPA No. 92-029, seeking to cancel Labo's certificate of candidacy on the ground that Labo made a false representation when he stated therein that he (Labo) is a "natural-born" citizen of the Philippines.

Summons in the disqualification case was issued by the Comelec on March 27, 1992 to petitioner Labo followed by a telegram dated April 1, 1992, requiring him to file his Answer within three (3) non-extendible days but the latter failed to respond.

On April 15, 1992, Ortega filed a motion to declare Labo in default for failure to file his Answer.

On April 24, 1992, the Comelec issued another order directing the Election Registrar of Baguio City to personally deliver the summons. On May 4, 1992, the disqualification case was set for reception of evidence. At the said hearing, Ortega presented the decision of this Court in *Labo v. Commission on Elections* (176 SCRA 1 [1989]) declaring Labo not a citizen of the Philippines. Labo, on the other hand, though represented by counsel, did not present any evidence. It was only on May 5, 1992 that petitioner submitted his Answer claiming Filipino citizenship.

On May 9, 1992, respondent Comelec issued the assailed resolution, the dispositive portion of which reads:

"WHEREFORE, premises considered, the Commission RESOLVED, as it hereby resolves, to grant the petition; respondent's (Labo's) certificate of candidacy is hereby DENIED due course and ordered CANCELLED; the City Election Registrar of Baguio City is hereby directed to delete the name of the respondent (Labo) from the list of candidates for City Mayor of Baguio City." (Rollo, pp. 47-48; GR No. 105111)

On the same date, Labo filed a motion to stay implementation of said resolution until after he shall have raised the matter before this Court.

On May 10, 1992, respondent Comelec issued an Order which reads:

"Acting on the 'Urgent Ex-Parte Motion for Clarification', filed by respondent (Labo) on May 9, 1992, the Commission resolves that the decision promulgated on May 9, 1992 disqualifying respondent Ramon L. Labo Jr., shall become final and executory only after five (5) days from promulgation pursuant to Rule 18, Section 13, Paragraph (b) of the Comelec Rules of Procedure.

"Accordingly, respondent (Labo) may still continue to be voted upon as candidate for City Mayor of Baguio City on May 11, 1992 subject to the final outcome of this case in the event the issue is elevated to the Supreme Court either on appeal or certiorari." (Rollo, p. 53; GR No. 105111; underscoring supplied)

On May 13, 1992, respondent Comelec resolved, *motu proprio*, to suspend the proclamation of Labo in the event he wins in the elections for the City Mayor of Baguio, (Rollo pp. 64-65; GR No. 105111).

On May 15, 1992, petitioner Labo filed the instant petition for review docketed as GR No. 105111 with prayer, among others, for the issuance of a temporary restraining order to set aside the May 9, 1992 resolution of respondent Comelec; to render judgment declaring him as a Filipino citizen; and to direct respondent Comelec to proceed with his proclamation in the event he wins in the contested elections.

On the same date, or on May 15, 1992, petitioner Ortega filed before the Comelec an urgent motion for the implementation of its May 9, 1992 resolution canceling Labo's certificate of candidacy.

After an exchange of pleadings, respondent Comelec in its resolution dated May 26, 1992 denied Ortega's motion in view of the pending case (GR No. 105111) earlier filed by Labo of the same nature before this Court.

On June 1, 1992, Ortega filed a petition for mandamus docketed as GR No. 105384 praying for the implementation of the Comelec's May 9, 1992 resolution.

Petitioner Ortega argues that respondent Comelec committed grave abuse of discretion when it refused to implement its May 9, 1992 resolution notwithstanding the fact that said resolution disqualifying Ramon Labo has already become final and executory.

After the parties have submitted their respective pleadings, the Court, on June 16 1992, Resolved to consider the case submitted for decision.

I. GR No. 105111

In essence, it is the contention of petitioner Labo that he is a Filipino citizen. Alleging lack of trial on the merits as well as the lack of opportunity to be heard in *Labo v. Commission on Elections* (*supra*), it is the submission of petitioner that he can prove his Filipino citizenship.

Petitioner cites the 1980 US case of *Vance v. Terrazas* (444 US 252), wherein it was held that in proving expatriation, an expatriating act and an intent to relinquish citizenship must be proved by a preponderance of evidence.

Petitioner contends that no finding was made either by the Commission on Immigration or the Comelec as regards his specific intent to renounce his Philippine citizenship.

Petitioner also faults the Comelec for the supposed abbreviated proceedings in SPA No. 92-029 which denied him adequate opportunity to present a full-dress presentation of his case. Thus: a) only one (1) day was set for hearing of the case, i.e., May 4, 1992; b) two days later, May 6, 1992 the hearing was set; c) instead of holding a hearing, the Comelec issued the questioned resolution on May 9, 1992.

If only to refresh the mind of petitioner Labo, as well as that of his counsel, records disclose that summons were issued by respondent Comelec as early as March 27, 1992 followed by a telegram on April 1, 1992. But petitioner

chose to ignore the same. Came April 15, 1992, petitioner Ortega filed a motion to declare petitioner Labo in default. Over-extending him (Labo) the benefit of due process, respondent Comelec, issued another order dated April 24, 1992, this time directing the Acting City Election Registrar of Baguio to personally serve the summons. The alleged delay in the resolution of SPA No. 92-029 can only be attributed to petitioner Labo and no one else. Thus, the respondent Comelec in its resolution dated May 9, 1992 stated:

"On May 4, 1992, the Acting Regional Election Registrar called this case for reception of evidence. Surprisingly, while as of that date respondent had not yet filed his Answer, a lawyer appeared for him.

"The petitioner (Ortega) presented the certificate of candidacy of respondent Ramon L. Labo, Jr., which contained in item 9 thereof the verified statement that respondent is a 'natural-born' Filipino citizen. To prove that respondent is not a Filipino citizen, petitioner submitted the decision of the Supreme Court in 'Ramon L. Labo, Jr., petitioner v. Comelec, et al.,' GR No. 86564, August 1, 1989, the dispositive portion of which states:

"WHEREFORE, petitioner Ramon J. (sic) Labo, Jr. is hereby declared NOT a citizen of the Philippines and therefore DISQUALIFIED from continuing to serve as Mayor of Baguio City. He is ordered to VACATE his office and surrender the same to the Vice-Mayor of Baguio City once this decision becomes final and executory."

"No evidence was adduced for the respondent as in fact he had no Answer as of the hearing.

"On May 5, 1992, respondent (Labo) filed his verified Answer, insisting that he is a Filipino citizen and continue to maintain and preserve his Filipino citizenship; that he does not hold an Australian citizenship; that the doctrine of res judicata does not apply in citizenship; and that 'existing facts support his continuous maintenance and holding of Philippine citizenship' and 'supervening events now preclude the application of the ruling in the Labo v. Comelec case and the respondent (Labo) now hold and enjoys Philippine citizenship.'

"No evidence has been offered by respondent to show what these existing facts and supervening events are to preclude the application of the Labo decision." (underscoring supplied)

"The Commission is bound by the final declaration that respondent is not a Filipino citizen. Consequently, respondent's verified statement in his certificate of candidacy that he is a "natural-born" Filipino citizen is a false material representation." (Rollo, pp. 45-48; GR No. 105111)

Up to this moment, petitioner Labo still failed to submit a scintilla of proof to shore his claim before this Court that he has indeed reacquired his Philippine citizenship.

Instead, petitioner relies in the US case of Vance v. Terrazas (supra). Suffice it to state that petitioner has already pleaded Vance in his motion for reconsideration in Labo v. Comelec (supra; Rollo p. 375). Having been previously passed upon, the Court sees no pressing need to re-examine the same and make a lengthy dissertation thereon.

At any rate, the fact remains that he has not submitted in the instant case any evidence, if there be any, to prove his reacquisition of Philippine citizenship either before this Court or the Comelec. On this score alone, We find no grave abuse of discretion committed by respondent Comelec in cancelling his (Labo's) certificate of candidacy and declaring that he is NOT a Filipino citizen pursuant to our ruling in the 1989 case of Labo v. Comelec (supra).

Petitioner Labo claims, however, that Sec. 72* of the Omnibus Election Code "operates as a legislatively mandated special repatriation proceeding" and that it allows his proclamation as the winning candidate since the resolution disqualifying him was not yet final at the time the election was held.

The Court finds petitioner Labo's strained argument quixotic and untenable. In the first place, Sec. 72 of the Omnibus Election Code has already been repealed by Sec. 6 of RA No. 6646, to wit:

"Sec. 6. 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 for and receives the winning number of votes in such election, the Court or the 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." (underscoring supplied)

A perusal of the above provision would readily disclose that the Comelec can legally suspend the proclamation of petitioner Labo, his reception of the winning number of votes notwithstanding, especially so where, as in this case, Labo failed to present any evidence before the Comelec to support his claim of reacquisition of Philippine citizenship.

Furthermore, we need only to reiterate what we have stated in *Labo v. Comelec* (supra), viz.,:

"Under CA No. 63, as amended by PD No. 725, Philippine citizenship may be reacquired by direct act of Congress, by naturalization, or by repatriation. It does not appear in the record, nor does the petitioner claim, that he has reacquired Philippine citizenship by any of these methods. He does not point to any judicial decree of naturalization or to any statute directly conferring Philippine citizenship upon him. x x x".

Petitioner Labo's status has not changed in the case at bar. To reiterate, he (Labo) was disqualified as a candidate for being an alien. His election does not automatically restore his Philippine citizenship, the possession of which is an indispensable requirement for holding public office (Sec. 39, Local Government Code).

Still, petitioner takes pains in raising a new argument not litigated before the respondent Comelec. Petitioner claims that he has reacquired his Filipino citizenship by citing his application for reacquisition of Philippine citizenship filed before the Office of the Solicitor General pursuant to PD 725 and Letter of Instruction No. 270* (Rollo, pp. 116-119; GR No. 105111).

To date, however, and despite favorable recommendation by the Solicitor General, the Special Committee on Naturalization had yet acted upon said application for repatriation. Indeed, such fact is even admitted by petitioner. In the absence of any official action or approval by the proper authorities, a mere application for repatriation does not, and cannot, amount to an automatic reacquisition of the applicant's Philippine citizenship.

II. GR No. 105384

Petitioner Ortega submits that since this Court did not issue a temporary restraining order as regards the May 9, 1992 resolution of respondent Comelec cancelling Labo's certificate of candidacy, said resolution has already become final and executory. Ortega further posits the view that as a result of such finality, the candidate receiving the next highest number of votes should be declared Mayor of Baguio City.

We agree with Ortega's first proposition.

At the time petitioner Labo filed his petition (GR No. 105111) on May 15, 1992, the May 9, 1992 resolution of respondent Comelec cancelling his (Labo's) certificate of candidacy had already become final and executory a day earlier, or on May 14, 1992, said resolution having been received by petitioner Labo on the same day it was promulgated, i.e., May 9, 1992 and in the interim no restraining order was issued by this Court.

Thus, Sec. 78 of the Omnibus Election Code provides:

"Sec. 78. Petition to deny due course or to cancel a certificate of candidacy --

x x x

"(e) The decision, order, or ruling of the Commission shall, after five (5) days from receipt of a copy thereof by the parties, be final and executory unless stayed by the Supreme Court." (underscoring supplied)

A similar provision is also found in Sec. 3, Rule 39 of the Comelec Rules of procedure, to wit:

"Sec. 3. Decisions final after five days. --Decisions in pre-proclamation cases and petitions to deny due course to or cancel certificates of candidacy, to declare a candidate as nuisance candidate or to disqualify a candidate, and to postpone or suspend elections shall become final and executory after the lapse of five (5) days from their promulgation, unless restrained by the Supreme Court." (underscoring supplied)

The resolution cancelling Labo's certificate of candidacy on the ground that he is not a Filipino citizen having acquired finality on May 14, 1992 constrains Us to rule against his proclamation as Mayor of Baguio City.

To begin with, one of the qualifications of an elective official is that he must be a citizen of the Philippines. Thus, the Local Government Code provides:

"Sec. 39. Qualifications. - (a) An elective local official must be a citizen of the Philippines; a registered voter in the barangay, municipality, city, or province or, in the case of a member of the sangguniang panlalawigan, sangguniang panlungsod, or sangguniang bayan, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect." (underscoring supplied)

Undoubtedly, petitioner Labo, not being a Filipino citizen, lacks the fundamental qualification for the contested office. Philippine citizenship is an indispensable requirement for holding an elective office. As mandated by law: "An elective local official must be a citizen of the Philippines."

The issue here is citizenship and/or Labo's alienage - the very essence which strikes at the very core of petitioner Labo's qualification to assume the contested office, he being an alien and not a Filipino citizen. The fact that he was elected by the majority of the electorate is of no moment. As we have held in *Frivaldo v. Commission on Elections* (174 SCRA 245 [1989]):

"x x x. The fact that he was elected by the people of Sorsogon does not excuse this patent violation of the salutary rule limiting public office and employment only to the citizens of this country. The qualification prescribed for elective office cannot be erased by the electorate alone. The will of the people as expressed through the ballot cannot cure the vice of ineligibility, especially if they mistakenly believed, as in this case, that the candidate was qualified. Obviously, this rule requires strict application when the deficiency is lack of citizenship. If a person seeks to serve in the Republic of the Philippines, he must owe his total loyalty to this country only, abjuring and renouncing all fealty and fidelity to any other state."

This brings us to the second issue raised by petitioner Ortega, i.e., whether the disqualification of petitioner Labo entitles the candidate (Ortega) receiving the next highest number of votes to be proclaimed as the winning candidate for mayor of Baguio City.

We hold in the negative. The disqualification of petitioner Labo does not necessarily entitle petitioner Ortega as the candidate with the next highest number of votes to proclamation as the mayor of Baguio City.

We make mention of petitioner Ortega because in his petition, he alleges that:

"x x x the May 11, 1992 elections were held with both herein petitioner (Roberto Ortega) and respondent LABO having been voted for the position of Mayor and unofficial results indicate that if the name of respondent LABO were deleted from the list of candidates, herein petitioner (Ortega) will be entitled to be proclaimed as Mayor-elect of Baguio City." (Rollo, p. 7, GR No. 105384; underscoring supplied)

and further prays this Court "to proclaim as the Mayor-elect of Baguio City the candidate who may have garnered

the most number of votes after the exclusion of the name of respondent candidate LABO." (Rollo, p. 15, Ibid.) Implicit, therefore is petitioner Ortega's desire to be proclaimed Mayor-elect of Baguio City.

As discussed hereunder, however, the Court finds Ortega's prayer devoid of merit.

While Ortega may have garnered the second highest number of votes for the office of city mayor, the fact remains that he was not the choice of the sovereign will. Petitioner Labo was overwhelmingly voted by the electorate for the office of mayor in the belief that he was then qualified to serve the people of Baguio City and his subsequent disqualification does not make respondent Ortega the mayor-elect. This is the import of the recent case of *Abella v. Comelec* (201 SCRA 253 [1991]), wherein we held that:

"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 Feb. 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 petitioner lost in the election. He was repudiated by the electorate. x x x 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 cannot assume the vacated position." (underscoring supplied)

Our ruling in *Abella* applies squarely to the case at bar and we see no compelling reason to depart therefrom. Like *Abella*, petitioner Ortega lost in the election. He was repudiated by the electorate. He was obviously not the choice of the people of Baguio City.

Thus, while respondent Ortega (GR No. 105111) originally filed a disqualification case with the Comelec (docketed as SPA-92-029) seeking to deny due course to Petitioner's (Labo's) candidacy, the same did not deter the people of Baguio City from voting for petitioner Labo, who, by then was allowed by the respondent Comelec to be voted upon, the resolution for his disqualification having yet to attain the degree of finality (Sec. 78, Omnibus Election Code).

And in the earlier case of *Labo v. Comelec* (*supra*), We held:

"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 in this issue is *Santos v. Commission on Election*, (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) and another two reserving their votes (Plana and Gutierrez, Jr.). 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. Santos* (136 SCRA 435), which represents the more logical and democratic rule. That case, which reiterated the doctrine first announced in 1912 in *Topacio vs. Paredes* (23 Phil. 238) was supported by ten members of the Court (Gutierrez, Jr., J., ponente, with Teehankee, Abad Santos, Melencio-Herrera, Plana, Escolin, Relova, De la Fuente, Cuevas and Alampay, JJ., concurring), without any dissent, x x x. 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 did 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 2nd, S 243, p. 676)

"The fact that a 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 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."

The rule, therefore, is the ineligibility of a candidate receiving majority votes does not entitle the eligible candidate receiving the next highest number of votes to be declared elected. A minority or defeated candidate cannot be deemed elected to the office.

Indeed, this has been the rule in the United States since 1849 (State ex rel. Dunning v. Giles, 52 Am. Dec. 149).

It is therefore incorrect to argue that since a candidate has been disqualified, the votes intended for the disqualified candidate should, in effect, be considered null and void. This would amount to disenfranchising the electorate in whom sovereignty resides. At the risk of being repetitious, the people of Baguio City opted to elect petitioner Labo bona fide, without any intention to misapply their franchise, and in the honest belief that Labo was then qualified to be the person to whom they would entrust the exercise of the powers of the government. Unfortunately, petitioner Labo turned out to be disqualified and cannot assume the office.

Whether or not the candidate whom the majority voted for can or cannot be installed, under no circumstances can a minority or defeated candidate be deemed elected to the office. Surely, the 12,602 votes cast for petitioner Ortega is not a larger number than the 27,471 votes cast for petitioner Labo (as certified by the Election Registrar of Baguio City: rollo, p. 109; GR No. 105111).

The rule would have been different if the electorate, fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety, would nonetheless cast their votes in favor of the ineligible candidate. In such case, the electorate may be said to have waived the validity and efficacy of their votes by notoriously misapplying their franchise or throwing away their votes, in which case, the eligible candidate obtaining the next higher number of votes may be deemed elected.

But this is not the situation obtaining in the instant dispute. It has not been shown, and none was alleged, that petitioner Labo was notoriously known as an ineligible candidate, much less the electorate as having known of such fact. On the contrary, petitioner Labo was even allowed by no less than the Comelec itself in its resolution dated May 10, 1992 to be voted for the office of the city mayor as its resolution dated May 9, 1992 denying due course to petitioner Labo's certificate of candidacy had not yet become final and subject to the final outcome of this case.

As aforesaid, the ineligibility of a candidate receiving majority votes does not entitle the candidate receiving the

next highest number of votes to be declared elected. Ortega failed to satisfy the necessary requisite of winning the election either by a majority or mere plurality of votes sufficient to elevate him in public office as mayor of Baguio City. Having lost in the election for mayor, petitioner Ortega was obviously not the choice of the people of Baguio City.

As a consequence of petitioners' ineligibility, a permanent vacancy in the contested office has occurred. This should now be filled by the vice-mayor, in accordance with Sec. 44 of the Local Government Code, to wit:

"Chapter 2. Vacancies and Succession

"SEC. 44. Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor and Vice-Mayor. - (a)
If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or the vice-mayor concerned shall become the governor or mayor. x x x (underscoring supplied)

WHEREFORE, the instant petitions are DISMISSED for lack of merit. Petitioners both being ineligible for the Office of the City Mayor of Baguio City and in view of the vacancy created in said office, the vice-mayor elect of said city in the May 11, 1992 elections is hereby declared Mayor of Baguio City after proclamation by the City Board of Canvassers. No costs.

SO ORDERED.

Narvasa, C.J., Cruz, Paras, Feliciano, Padilla, Griño-Aquino, Medialdea, Regalado, Davide Jr., Romero, Bellosillo, and Nocon, JJ., concur.

Gutierrez Jr., J., concurring and dissenting opinion.

* The first time was in *Ramon L. Labo, Jr., v. Comelec* (176 SCRA 1 [1989])

* "Sec. 72 Effects of disqualification cases and priority. - The Commission and the courts shall give priority to cases of disqualification by reason of violation of this Act to the end that a final decision shall be rendered not later than seven days before the election in which the disqualification is sought.

"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. Nevertheless, if for any reason, a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, his violation of the provisions of the preceding sections shall not prevent his proclamation and assumption to office."

* PD 725 authorizes the Special Committee on Naturalization (created under LOI 270) to accept and process petitions for repatriation, as follows: "(1) Filipino women who lost their Philippine citizenship by marriage to aliens; and (2) natural born Filipinos who have lost their Philippine citizenship may reacquire Philippine citizenship through repatriation by applying with the Special Committee on Naturalization created by Letter of Instruction No. 270, and, if their applications are approved, taking the necessary oath of allegiance to the Republic of the Philippines, after which they shall be deemed to have reacquired Philippine citizenship. The Commission on Immigration shall thereupon cancel certificate of registration."

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CONCURRING AND DISSENTING OPINION

GUTIERREZ, JR., J.:

There is no need for me to discuss Mayor Ramon L. Labo, Jr.'s reacquisition of Philippine citizenship. In the first case brought to us, *Labo, Jr. v. COMELEC*, 176 SCRA 1 [1989], I dissented from the resolution denying his motion for reconsideration.

It is my view that since Mayor Labo never validly acquired Australian citizenship, he never lost his Philippine citizenship. His oath of allegiance to Australia was null and void because he was not qualified to be an Australian citizen. This is clear from the certification of Australia's Embassy officials. To me, a null and void act cannot have the positive and serious effect of stripping a Filipino of his natural-born citizenship.

Labo's taking an oath as citizen of a foreign country was based on his marriage to a citizen of that country. It turns out, however, that Labo's marriage was bigamous and void because his Australian wife had an existing valid marriage when she tied the knot with him. Not being married to her, Labo could not become an Australian. Not being qualified to become an Australian citizen, his oath of allegiance to that country was a meaningless act. It should not deprive him of his Philippine citizenship. I cannot believe that Mayor Labo gave up his citizenship in order to acquire a stateless status.

I, however, concur in the Court's reiteration of the rule that it is the vice-mayor elect who succeeds the disqualified mayor-elect and not the losing candidate for mayor.

I have to be consistent with my ponencia in *Geronimo v. Santos*, 136 SCRA 435 [1985]. The *Geronimo* ruling is even more applicable to this case because on May 11, 1992, the day of the elections, Labo was not yet disqualified. He was allowed to vote and to be voted for. The COMELEC decision disqualifying him became final and executory only on May 14, 1992. In the meantime, the citizens of Baguio had already stated who was their choice for Mayor. He had already been elected.

I would like to repeat some observations made in my dissent the first Labo case:

xxx xxx xxx

"I agree with the Court that the citizen of the Philippines must take pride in his status as such and cherish this priceless gift that, out of more than a hundred other nationalities, God has seen fit to grant it to him. We love the Philippines; it is the land of our birth; it is the home of our people. The emotions kindled by love of country cannot be described.

"But precisely because of the inestimable value of Philippine citizenship, we should never declare a Filipino as having lost his citizenship except upon the most compelling consideration.

"Let us be realistic. There must be over two million Filipinos who are scattered all over the world desperately trying to earn a living. They endure loneliness and separation from loved ones, bear with racial discrimination, suffer rape and other forms of abuse, brave the perils of foreign cultures, and put up with the failings of their own Government in looking after their welfare. Being in foreign countries, most of them yearn for their homeland and realize what they have lost. Only now do they appreciate what they used to take for granted.

"If some of them may have been forced by circumstances to seemingly renounce their citizenship, let us not summarily condemn them."

xxx xxx xxx

Citizenship is a political and civil right no less important than freedom of speech, liberty of abode, right against

unreasonable searches and seizures, and other basic guarantees of the Bill of Rights.

In deciding cases involving citizenship, I believe that the presumptions should be in favor of its retention and against its loss. We apply this principle to cases involving civil liberties. We should also apply it to a sincere invocation of Philippine citizenship. We should not lightly strip a person of his natural born status but should accord to him every possible interpretation consistent with the exercise of a right that was vested in him from birth.

In view of the foregoing, I vote to GRANT the petition and to order the proclamation and assumption of office of Baguio Mayor Ramon Labo, Jr.

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