# MARCITA MAMBA PEREZ, PETITIONER, VS. COMMISSION ON ELECTIONS AND RODOLFO E. AGUINALDO, RESPONDENTS.

*G.R. No. 133944. October 28, 1999*

Ponente: MENDOZA, J.

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**MENDOZA, J.:**

This is a petition for certiorari to annul the resolution, dated May 10, 1998, of the First Division of the Commission on Elections, dismissing petitioner Marcita Mamba Perez's petition for the disqualification of private respondent Rodolfo E. Aguinaldo as a candidate for Representative of the Third District of Cagayan in the May 11, 1998 elections, as well as the resolution of the COMELEC en banc, dated June 11, 1998, denying petitioner's motion for reconsideration.

The facts are not in dispute.

On March 26, 1998, private respondent filed his certificate of candidacy for Representative of the Third District of Cagayan in the May 11, 1998 elections. Four days later, on March 30, 1998, petitioner, as a voter and citizen, filed in the COMELEC a petition for the disqualification of private respondent as a candidate on the ground that he had not been a resident of the district for at least one (1) year immediately before the day of the elections as required by Art. VI, §6 of the Constitution.

In support of her claim, petitioner presented private respondent's certificates of candidacy[1] for governor of Cagayan in the 1988, 1992, and 1995 elections; his voter's affidavit[2] which he used in the 1987, 1988, 1992, 1995, and 1997 elections; and his voter registration record dated June 22, 1997,[3] in all of which it is stated that he is a resident of Barangay Calaoagan Dackel, Municipality of Gattaran, which is outside the Third District of Cagayan. Petitioner alleged that private respondent filed an application[4] for the transfer of his registration as voter from Gattaran, Cagayan (First District) to Tuguegarao, Cagayan (Third District) only on December 17, 1997 and that said application was approved only on January 7, 1998. Petitioner prayed that in the event the case was not finally decided before the elections and private respondent obtained the highest number of votes, the latter's proclamation be suspended.

In his answer, private respondent claimed that while he had been a resident of Gattaran, Cagayan in 1990, he transferred his residence to Tuguegarao, Cagayan by renting an apartment at No. 13-E Magallanes St., Tuguegarao, Cagayan, in order to hide his mistress from public view because, at that time, his marriage to his former wife was still subsisting. In support of his claim, he presented the affidavit[5] of the owner of the apartment, Engineer Alfredo Ablaza, in which it is stated that private respondent had been his lessee since July 1990. In addition, private respondent presented the contract of lease[6] of another residential apartment at Kamias Street, Tanza, Tuguegarao, Cagayan, for the period July 1, 1995 to June 30, 1996, between him, as lessee, and Tomas T. Decena, as lessor; his marriage license dated January 7, 1997;[7] the marriage certificate between him and his present wife, Lerma Dumaguit, dated January 18, 1998;[8] the birth certificate[9] of their daughter, Geniah Laureen D. Aguinaldo; and various letters,[10] all of which show that he had been a resident of

Tuguegarao, Cagayan for at least one (1) year before the May 11, 1998 elections.

On May 10, 1998, the First Division of the COMELEC, in a unanimous resolution,[11] dismissed the petition for disqualification, finding private respondent Aguinaldo qualified to run as representative for the Third District of Cagayan.

On May 11, 1998, private respondent was elected Representative of the Third District of Cagayan, with 65,058 votes over his rival Manuel N. Mamba's 58,507 votes.[12] Accordingly, on May 16, 1998, he was proclaimed elected and, on May 17, 1998, he was sworn in office.

On May 22, 1998, petitioner filed a motion for reconsideration reiterating her allegation that private respondent lacked the requisite residency in the Third District of Cagayan and arguing that the proclamation of private respondent was not a legal impediment to the continuation of the hearing on her motion in view of R.A. No. 6646, §6. Her motion was, however, denied by the COMELEC en banc in its resolution of June 11, 1998. Hence, this petition.

Petitioner contends that the COMELEC committed grave abuse of discretion in holding that private respondent had been a resident of Tuguegarao, Cagayan since July 1990 when he rented an apartment there in order to hide his mistress. Petitioner contends that transfer of residence to the place where private respondent is keeping his mistress cannot amount to a change of domicile because one's domicile is the place where one and one's legitimate family resides. She also argues that private respondent could not have changed his residence to Tuguegarao in 1990 considering that his certificates of candidacy for governor of Cagayan in the 1988, 1992, and 1995 elections, as well as his voter registration records, the latest of which was made on June 22, 1997, indicate that he is a resident of Gattaran, which is in the First District of Cagayan. Petitioner avers that in the absence of clear and positive proof, one's domicile of origin should be deemed to continue and that to successfully effect a change of domicile, one must prove an actual change of domicile, a bonafide intention of abandoning the former place of residence and of establishing a new one, and unequivocal acts which correspond with the intention.

On the other hand, private respondent asks that the instant petition be dismissed. He argues that after his proclamation on May 16, 1998 and his assumption of office on June 30, 1998, the COMELEC lost jurisdiction to pass upon his qualifications for the office of Representative. He argues further that this case should have been filed with the House of Representatives Electoral Tribunal which has jurisdiction over the subject matter of the case.

In a supplemental pleading,[13] petitioner replies that the COMELEC retained jurisdiction over the case because she filed the petition for disqualification on March 30, 1998, before the elections on May 11, 1998, and that pursuant to R.A. No. 6646, §6, the COMELEC could continue the proceedings for the determination of the disqualification of private respondent.

The threshold issue, therefore, is whether the Court has jurisdiction to entertain the instant petition for certiorari and eventually pass upon private respondent's eligibility for the office of Representative of the Third District of Cagayan. Petitioner, in sustaining the affirmative side of the question, invokes the following provision of R.A. No. 6646:

> 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 Commission (COMELEC) 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


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> of his guilt is strong.

As already stated, the petition for disqualification against private respondent was decided by the First Division of the COMELEC on May 10, 1998. The following day, May 11, 1998, the elections were held. Notwithstanding the fact that private respondent had already been proclaimed on May 16, 1998 and had taken his oath of office on May 17, 1998, petitioner still filed a motion for reconsideration on May 22, 1998, which the COMELEC en banc denied on June 11, 1998. Clearly, this could not be done. Sec. 6 of R.A. No. 6646 authorizes the continuation of proceedings for disqualification even after the elections if the respondent has not been proclaimed. The COMELEC en banc had no jurisdiction to entertain the motion because the proclamation of private respondent barred further consideration of petitioner's action. In the same vein, considering that at the time of the filing of this petition on June 16, 1998, private respondent was already a member of the House of Representatives, this Court has no jurisdiction over the same. Pursuant to Art. VI, §17 of the Constitution, the House of Representatives Electoral Tribunal has the exclusive original jurisdiction over the petition for the declaration of private respondent's ineligibility. As this Court held in Lazatin v. House of Representatives Electoral Tribunal:[14]

> The use of the word "sole" emphasizes the exclusive character of the jurisdiction conferred. The exercise of the power by the Electoral Commission under the 1935 Constitution has been described as "intended to be as complete and unimpaired as if it had remained originally in the legislature." Earlier, this grant of power to the legislature was characterized by Justice Malcolm "as full, clear and complete." Under the amended 1935 Constitution, the power was unqualifiedly reposed upon the Electoral Tribunal and it remained as full, clear and complete as that previously granted the legislature and the Electoral Commission. The same may be said with regard to the jurisdiction of the Electoral Tribunals under the 1987 Constitution.

Petitioner's remedies should have been (1) to reiterate her prayer in the petition for disqualification, and move for the issuance of an order by the COMELEC suspending the proclamation of private respondent pending the hearing of the said petition and, in the event the motion was denied before the proclamation of private respondent, file a petition for certiorari in this Court with a prayer for a restraining order to enjoin the proclamation of private respondent; or (2) to file a petition for quo warranto in the House of Representatives Electoral Tribunal within ten (10) days after the proclamation of private respondent as Representative-elect on May 16, 1998.[15] Obviously, neither of these remedies can be availed of now.

In any event, even assuming that the Court has jurisdiction to resolve the instant petition for certiorari, we find no merit in petitioner's allegation that private respondent is ineligible for the office of Representative of the Third District of Cagayan.

Art. VI, §6 of the Constitution states:

> No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election.

The meaning and purpose of the residency requirement were explained recently in our decision in Aquino v. COMELEC,[16] as follows:

> . . . [T]he place "where a party actually or constructively has his permanent home," where he, no matter where he may be found at any given time, eventually intends to return and remain, i.e., his domicile, is that to which the Constitution refers when it speaks of residence for the purposes of election law. The manifest purpose of this deviation from the usual conceptions of residency in law as explained in Gallego vs. Vera is "to exclude strangers or newcomers unfamiliar with the conditions and needs of the community" from taking advantage of favorable circumstances existing in that community for electoral gain. While there is nothing wrong with the

> practice of establishing residence in a given area for meeting election law requirements, this nonetheless defeats the essence of representation, which is to place through the assent of voters those most cognizant and sensitive to the needs of a particular district, if a candidate falls short of the period of residency mandated by law for him to qualify. That purpose could be obviously best met by individuals who have either had actual residence in the area for a given period or who have been domiciled in the same area either by origin or by choice.

In the case at bar, the COMELEC found that private respondent changed his residence from Gattaran to Tuguegarao, the capital of Cagayan, in July 1990 on the basis of the following: (1) the affidavit of Engineer Alfredo Ablaza, the owner of the residential apartment at 13-E Magallanes St., Tuguegarao, Cagayan, where private respondent had lived in 1990; (2) the contract of lease between private respondent, as lessee, and Tomas T. Decena, as lessor, of a residential apartment at Kamias St., Tanza, Tuguegarao, Cagayan, for the period July 1, 1995 to June 30, 1996; (3) the marriage certificate, dated January 18, 1998, between private respondent and Lerma Dumaguit; (4) the certificate of live birth of private respondent's second daughter; and (5) various letters addressed to private respondent and his family, which all show that private respondent was a resident of Tuguegarao, Cagayan for at least one (1) year immediately preceding the elections on May 11, 1998.

There is thus substantial evidence supporting the finding that private respondent had been a resident of the Third District of Cagayan and there is nothing in the record to detract from the merit of this factual finding.

Petitioner contends that the fact that private respondent was a resident of Gattaran, at least until June 22, 1997, is shown by the following documentary evidence in the record, to wit: (1) his certificates of candidacy for governor of Cagayan in the 1988, 1992 and 1995 elections; (2) his voter's registration records, the latest of which was made on June 22, 1997; and (3) the fact that private respondent voted in Gattaran, Cagayan, in the elections of 1987, 1988, 1992 and 1995.

The contention is without merit. The fact that a person is registered as a voter in one district is not proof that he is not domiciled in another district. Thus, in Faypon v. Quirino,[17] this Court held that the registration of a voter in a place other than his residence of origin is not sufficient to consider him to have abandoned or lost his residence.

Nor is it of much importance that in his certificates of candidacy for provincial governor in the elections of 1988, 1992, and 1995, private respondent stated that he was a resident of Gattaran. Under the law,[18] what is required for the election of governor is residency in the province, not in any district or municipality, one year before the election.

Moreover, as this Court said in Romualdez-Marcos v. COMELEC:[19]

> It is the fact of residence, not a statement in a certificate of candidacy, which ought to be decisive in determining whether or not an individual has satisfied the constitution's residency qualification requirement. The said statement becomes material only when there is or appears to be a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.

In this case, although private respondent declared in his certificates of candidacy prior to the May 11, 1998 elections that he was a resident of Gattaran, Cagayan, the fact is that he was actually a resident of the Third District not just for one (1) year prior to the May 11, 1998 elections but for more than seven (7) years since July 1990. His claim that he had been a resident of Tuguegarao since July 1990 is credible considering that he was governor from 1988 to 1998 and, therefore, it would be convenient for him to maintain his residence in Tuguegarao, which is the capital of the province of Cagayan.

As always, the polestar of adjudication in cases of this nature is Gallego v. Vera,[20] in which this Court held: "[W]hen the evidence on the alleged lack of residence qualification is weak or inconclusive and it clearly appears,

as in the instant case, that the purpose of the law would not be thwarted by upholding the right to the office, the will of the electorate should be respected." In this case, considering the purpose of the residency requirement, i.e., to ensure that the person elected is familiar with the needs and problems of his constituency, there can be no doubt that private respondent is qualified, having been governor of the entire province of Cagayan for ten years immediately before his election as Representative of that province's Third District.

WHEREFORE, the petition is DISMISSED.

**SO ORDERED.**

Davide, Jr., C.J., Melo, Puno, Purisima, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur. Vitug, and Panganiban, JJ., in the result.

Pardo, J., no part.

Bellosillo, Kapunan, and Quisumbing, JJ., on official leave.

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[1] Rollo, pp. 39-42; Annexes A, B, and C of the Petition for Disqualification, Annex D, Petition.

[2] Id., p. 43; Annex D, id.

[3] Id., p. 44; Annex E, id.

[4] Id., p. 88; Annex F, id.

[5] Id., p. 66; Annex 3, Answer to Petition for Disqualification.

[6]] Id., pp. 67-69; Annex 4, id.

[7] Id., p. 73; Annex 6, id.

[8] Id., p. 74; Annex 7, id.

[9] Id., p. 75; Annex 8, id.

[10] Id., pp. 76-84; Annexes 9 to 11, id.

[11] Per Commissioner Teresita Dy-Liacco Flores and concurred in by Presiding Commissioner Manolo B. Gorospe and Commissioner Evelyn I. Fetalino.

[12] Rollo, p. 117; Annex 1, Comment.

[13] Rollo, pp. 158-166.

**[14] 168 SCRA 391, 401 (1988).**

[15] Revised Rules of the House of Representatives Electoral Tribunal, Rule 17.

**[16] 248 SCRA 400, 420-421 (1995).**

[17] 96 Phil. 294 (1954).

[18] LGC, §39(a).


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**[19] 248 SCRA 301, 326 (1995).**

[20] 73 Phil. 453, 459 (1941).

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