

MAUYAG B. PAPANDAYAN, JR., PETITIONER, VS. THE COMMISSION ON ELECTIONS AND FAHIDA P. BALT, RESPONDENTS.*G.R. No. 147909. April 16, 2002*

Ponente: MENDOZA, J.

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This is a petition for certiorari to annul the resolution, dated May 8, 2001, of the Second Division^[1] of the Commission on Elections (COMELEC), disqualifying petitioner Mauyag B. Papandayan, Jr. as a candidate for municipal mayor of the Municipality of Tubaran, Province of Lanao del Sur in the May 14, 2001 elections, and the resolution of the COMELEC en banc, dated May 12, 2001, denying petitioner's motion for reconsideration.

In the May 14, 2001 elections, three candidates ran for the position of mayor of Tubaran, Lanao del Sur, namely: petitioner Mauyag B. Papandayan, Jr., respondent Fahida P. Balt, who was the incumbent mayor seeking reelection, and Maiko Hassan Bantuas. Respondent Balt sought the disqualification of petitioner in SPC Case No. 01-114 of the COMELEC, alleging that petitioner was not a resident of Barangay Tangcal in Tubaran, Lanao del Sur but a permanent resident of Bayang, Lanao del Sur.

In support of her allegation, respondent submitted the joint affidavit^[2] dated February 14, 2001, of Barangay Chairman Hadji Bashir Ayonga and two members of the Sangguniang Barangay of Tangcal, Tubaran, Hadji Taher Batawe and Saadori Buat, stating that petitioner never resided in Barangay Tangcal, Tubaran as they personally knew all the registered voters of the said barangay; that petitioner omitted to own nor lease any house in Barangay Tangcal; and that petitioner's father, the late Mauyag Papandayan, Sr., who was a school superintendent, and his family were permanent residents of Bayang, Lanao del Sur. Respondent also submitted a similar affidavit^[3] dated February 17, 2001, of Samoranao Sarip, a member of the Sangguniang Barangay of Tangcal. She averred that petitioner did not state in his Voter Registration Record^[4] accomplished on May 8, 1999, the number of years and months (Annex D-1) he had been a resident of the Municipality of Tubaran.

In his answer^[5] petitioner claimed that he was a resident of No. 13 Barangay Tangcal in Tubaran; that he was the son of the late Mauyag Capal Papandayan, Sr., a former school superintendent, and Hadja Khalida Magangcong Balt; that both the Capal and Papandayan clans were natives of Tangcal, Tubaran, and the Magangcong clan were from Boribid, Tubaran while most of the Balt clan were residents of Bayang; that in 1990, he transferred his domicile from Bayang to Tangcal and stayed there with his wife Raina Guina Dimaporo, whose family and relatives were residents and natives of Tangcal, Tubaran; that he managed an agricultural land in Tubaran which he co-owned with his family; and that he filed in 1998 his certificate of candidacy for the position of municipal mayor of Tubaran, which he later withdrew.

To support his allegations, petitioner presented the following:

- Affidavit^[6] dated March 8, 2001, of Taha C. Ali, Municipal Election Officer of the Office of the Assistant Regional Election Director of the COMELEC, Region XII, Iligan City, stating that, based on the continuous verification of household members in Tubaran, petitioner and his wife lived at No. 13 Barangay Tangcal,

Tubaran.

- Affidavit of Witness,[7] dated March 8, 2001, of Delgado Caontongan, stating that he was an elementary school teacher of Tubaran and that he was appointed Chairman of the Board of Election Inspectors (BEI) of Precinct No. 28-A in Tangcal, Tubaran in the May 8, 1999 registration of voters; that he personally received the Voter Registration Record of petitioner whom he knew to be a resident of Tubaran; and that he knew petitioner to be a qualified voter and, for that reason, he approved petitioner's Voter Registration Record and included his name in the master list of voters in Precinct No. 28-A.

- Certificate of Candidacy for Mayor[8] of petitioner, filed on January 11, 2001, with the COMELEC stating, among other things, that he was born on October 14, 1964; that his place of birth was Marawi City; that he was employed as a municipal employee of a local government unit in Bayang; that he was a resident of Tangcal, Tubaran, Lanao del Sur; that he was a registered voter of Precinct No. 28-A in Barangay Tangcal, Tubaran, Lanao del Sur; and that his length of residency in the Philippines was 36 years and 10 months (Annex 3-A).

- Affidavit of Witness,[9] dated March 8, 2001, of Rafael Guina Dimaporo (brother of petitioner's wife), stating that his family and the family of petitioner were residents of Tangcal, Tubaran; that his relatives on the maternal side (the Andag and the Guina clans) were natives of Barangays Tangcal and Datumanong, both in the Municipality of Tubaran; and that during the May 11, 1992 national and local elections, he was one of the mayoralty candidates who garnered the second highest number of votes.

- Affidavit of Witness,[10] dated March 8, 2001, of Sobair Tagtal, stating that he was a farmer and one of the share tenants of an agricultural land located in Tubaran, co-owned by petitioner and the latter's siblings; that petitioner had been managing the land and residing in Tangcal, Tubaran since 1990; and that he knew petitioner filed his certificate of candidacy in the 1998 mayoralty election in Tubaran.

- Certification,[11] dated March 7, 2001, by Salem Buzar, Election Officer in Bayang, Lanao del Sur, certifying that petitioner was not registered as a voter of Bayang in the May 11, 1998 and May 14, 2001 elections.

- Affidavit of Desistance,[12] dated March 8, 2001, of Hadji Bashir Ayonga, stating that he was withdrawing the joint affidavit, dated February 14, 2001, which he had earlier executed, together with Hadji Taher Batawe and Saadori Buat, as he did not understand the consequences of signing the said affidavit and its contents had not been explained to him; that he did not know that the affidavit would be used in a disqualification case against petitioner who was a first cousin of his grandchildren; that he knew petitioner to be a registered voter and a candidate for municipal mayor in Tubaran; and that petitioner is a native of Tubaran because he is a descendant of Datu Sa Tatarikun Tangcal (Sumowa) on the paternal side and a legitimate member of the Sultanate of Boribid in Tubaran on the maternal side.

- Affidavit of Desistance,[13] dated March 8, 2001, of Samoranao Sarip, stating that he was withdrawing the affidavit, dated February 17, 2001, which he had earlier executed, as he did not understand the consequences of signing the said affidavit and its contents had not been explained to him; that he did not know that the affidavit would be used in a disqualification case against petitioner; that he knew petitioner to be a registered voter and a candidate for municipal mayor of Tubaran; and that petitioner is a native of Tubaran because he is a descendant of Datu Sa Tatarikun Tangcal (Sumowa) on the paternal side and a legitimate member of the Sultanate of Boribid in Tubaran on the maternal side.

In its resolution, dated May 8, 2001, the COMELEC (Second Division) in SPA No. 01-114 declared petitioner to be disqualified and ordered his name to be stricken off the list of candidates and all votes cast in his favor not to be counted but considered as stray votes. Citing the joint affidavit, dated February 14, 2001, of Hadji Bashir

Ayonga, Hadji Taher Batawe, and Saadori Buat and the affidavit of Samoranao Sarip stating that petitioner had not at any time been a resident of Tangcal, Tubaran, the COMELEC ruled that it was the fact of petitioner's residence, not the statement in his certificate of candidacy, which determined whether or not he had satisfied the residency requirement of one (1) year preceding the May 14, 2001 elections. In finding that petitioner never intended to relinquish his former domicile in Bayang, the COMELEC took note of the testimony of petitioner in the exclusion proceedings against him before the municipal trial court (Election Case Nos. 2001-237-T to 2001-244-T), in which petitioner stated that he was living in Marawi City where he was the private secretary of Mayor Abdillah Ampatua.

On May 14, 2001, elections were held in Tubaran. Petitioner was among those voted by the electorate for the position of municipal mayor. On May 15, 2001, he received a telegram^[14] from the COMELEC notifying him of the resolution, dated May 12, 2001, of the COMELEC en banc which denied his motion for reconsideration.

On May 17, 2001, he filed the present petition for certiorari with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction.

Meanwhile, on May 19, 2001, petitioner filed a petition with the COMELEC (First Division) in SPC No. 01-039 seeking the issuance of an order directing the Board of Election Inspectors (BEI) of Tubaran to count and tally the ballots cast in his favor during the May 14, 2001 elections pursuant to COMELEC Resolution N. 4116. The said resolution provides that if the disqualification case has not become final and executory on the day of the election, the BEI shall tally and count the votes of the candidate declared disqualified.

On the other hand, respondent filed a pre-proclamation case (SPC No. 01-259) in the COMELEC.

On May 29, 2001, the First Division of the COMELEC (in SPC No. 01-039) issued an order suspending the proclamation of petitioner as the duly elected mayor of Tubaran pending the resolution of this present petition. However, despite the said order (in SPC No. 01-039), the Municipal Board of Canvassers of Tubaran proceeded with the proclamation of petitioner on June 3, 2001. Upon motion of respondent, therefore, the COMELEC (First Division), in an order, dated June 25, 2001, set aside the proclamation of petitioner, without prejudice to the filing of the appropriate charges against the members of the Board responsible for the proclamation.^[15] Thereafter, the COMELEC en banc issued a resolution, dated January 30, 2002, sustaining the annulment of the proclamation of petitioner and dismissing SPC No. 01-039 for being moot and academic. It appears that, as a consequence thereof, the incumbent Vice-Mayor of Tubaran assumed the position of mayor pursuant to the COMELEC en banc resolution dated January 30, 2002.

On May 22, 2001, this Court required the COMELEC and respondent Fahida Balt to comment on the petition and, upon the posting of a bond by petitioner in the amount of P10,000.00, issued a temporary restraining order enjoining the COMELEC from implementing its resolutions of May 8 and May 12, 2001.

In a manifestation,^[16] dated May 28, 2001, petitioner submitted the certificates of votes (Annexes A to A-30), duly signed by the BEI Chairman and his two members, showing that in the 31 precincts of Tubaran, he obtained 1,744 votes [should be 1,730] votes, while respondent Balt and Bantuas obtained 1,528 votes [should be 1,540 votes] and 974 votes [should be 967 votes], respectively. Respondent countered that, despite these results, petitioner could not be proclaimed mayor as she had appealed from the ruling of the Municipal Board of Canvassers of Tubaran, wherein she sought the exclusion and the annulment of the election returns from certain precincts in Tubaran because of massive fraud, terrorism, and substitution of registered voters.

After canvass of the election returns, the Municipal Board of Canvassers issued a Municipal Certificate of Canvass^[17] showing the following results:

Petitioner Papandayan – 1,744 votes

Respondent Balt – 1,540 votes

Maiko Hassan Bantuas – 968 votes

The Office of the Solicitor General filed a motion in lieu of a comment, recommending that this Court grant the present petition. It contends that the joint affidavit, dated February 14, 2001, of Barangay Chairman Hadji Bashir Ayonga and Sangguniang Barangay members Hadji Taher Batawe and Saadori Buat, stating that petitioner had not at any time been a resident of Tubaran, constituted hearsay evidence as the three affiants were never presented during the proceedings of the case. In fact, one of the affiants, Hadji Bashir Ayonga, later executed an Affidavit of Desistance, dated March 8, 2001, retracting his earlier statements. As for the statements made by petitioner in Election Case Nos. 2001-237-T to 2001-244-T, pending before the municipal trial court, that he was then “not residing” in Bayang but in Tubaran, Lanao del Sur although “living” in Marawi City, the Solicitor General says that the same does not necessarily mean that petitioner was not a resident of Tubaran as such answer merely means that he was previously living in Marawi City.

In her comment, respondent insists that petitioner was not a resident of Tubaran but of Bayang. She contends that petitioner made misrepresentations in claiming that he filed his certificate of candidacy for mayor of Tubaran in the May 11, 1998 elections and that he was a registered voter in the May 11, 1998 elections; that when petitioner registered as a voter in Precinct No. 28-A in Tangcal, Tubaran on May 8, 1999, he refused to fill out the space corresponding to the period of his residency in Tubaran; that it was unusual for the BEI Chairman to execute an affidavit, stating therein that he allowed the registration of the petitioner because he had known the latter to be a “legitimate resident of [Tubaran] even prior to the May 8, 1999 registration”; that it was doubtful if the election officer of Tubaran really conducted a continuous verification of household members of Tubaran; and that the certification of the election officer of Bayang that petitioner was not a registered voter in Bayang during the May 11, 1998 and May 14, 2001 elections does not prove that he was a registered voter in Tubaran. Respondent argues that the COMELEC did not commit any “error of jurisdiction” to justify the grant of this petition for certiorari but, if at all, only an “error of judgment,” which is correctible by ordinary appeal.

In his reply to respondent’s comment, petitioner points out that respondent did not appear at the March 9, 2001 hearing of the disqualification case before the COMELEC; that of the six witnesses whom respondent said she was presenting, only two — Hadji Taher Batawe and Saadori Buat — appeared, and both merely affirmed their joint affidavit; that, although the cross-examination of the two was reset on March 12, 2001, they nevertheless failed to appear and thus deprived petitioner’s counsel of the opportunity to cross-examine them; that respondent’s four other witnesses — Hadji Bashir Ayonga, Sultan Sarip Bilao, Osio Balbal, and Puno Balbal — did not appear either; that instead Sultan Sarip Bilao later executed an affidavit^[18] denying his earlier statement that the petitioner was not a resident of Tubaran; and that the Second Division of the COMELEC and the COMELEC en banc did not conduct any hearing in the disqualification case and merely relied on the recommendations submitted by the hearing officer. According to petitioner, while he filed his certificate of candidacy for mayor of Tubaran in the May 11, 1998 elections, the same was later withdrawn on his behalf by Casim A. Guro, his brother-in-law. This fact was corroborated by Macawaris P. Masanang, a sultan in Tubaran, who stated that he had been an Election Assistant of the COMELEC since 1978 and that, as such, he received petitioner’s certificate of candidacy, which was later withdrawn by Casim A. Guro on behalf of petitioner.

After reviewing the records, we find the foregoing allegations of petitioner to be correct. Hence, his petition should be granted.

First. Petitioner contends that the resolution, dated May 12, 2001, of the COMELEC en banc was not yet final and executory when the elections were held on May 14, 2001. Consequently, the Board of Election Inspectors of

Tubaran, in the exercise of its ministerial duty, had to count the votes cast in his favor. Respondent, on the other hand, avers that the assailed resolution, dated May 12, 2001, of the COMELEC en banc had attained finality five (5) days thereafter, on May 17, 2001, as its enforcement had not been restrained by this Court within the said period. The temporary restraining order should thus be set aside, the same having been issued by this Court only on May 22, 2001.

At the time the elections were held in May 14, 2001, the assailed resolution, dated May 12, 2001, had not become final and executory. Hence, the Board of Election Inspectors (BEI) was duty bound to tally and count the votes cast in favor of petitioner. As R.A. No. 6646, §6 provides:

Effect of disqualification. — 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 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.

On the other hand, COMELEC Resolution No. 4116, promulgated on May 7, 2001, in pertinent parts reads:

RESOLUTION NO. 4116

This pertains to the finality of decisions or resolutions of the Commission en banc or division, particularly on Special Actions (Disqualification cases).

Sec. 13, Rule 18, of the COMELEC Rules of Procedure on Finality of Decisions or Resolutions provides:

“Sec. 13. Finality of Decisions or Resolutions. — (a) In ordinary actions, special proceedings, provisional remedies, and special reliefs, a decision or resolution of the Commission en banc shall become final and executory after thirty (30) days from its promulgation.

(b) In Special Actions and Special cases, a decision or resolution of the Commission en banc shall become final and executory after five (5) days from its promulgation unless restrained by the Supreme Court.

(c) Unless a motion for reconsideration is seasonably filed, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days in Special Actions and Special cases and after fifteen (15) days in all other actions or proceedings, following its promulgation.”

Special Actions cases refer to the following:

- a) Petition to deny due course to certificate of candidacy;
- b) Petition to declare a candidate as nuisance candidate;
- c) Petition to disqualify a candidate; and
- d) Petition to postpone or suspend an election.

....

Considering the foregoing and in order to guide field officials on the finality of decisions or resolutions on Special Actions cases (disqualification cases); the Commission RESOLVED, as it hereby RESOLVED, as follows:

- the decision or resolution of the en banc of the Commission on disqualification cases shall become final and executory after five (5) days from its promulgation unless restrained by the Supreme Court;
- the decision or resolution of a Division on disqualification cases shall become final and executory after the lapse of five (5) days unless a motion for reconsideration is seasonably filed;

- where the ground for the disqualification case is by reason of non-residence, citizenship, violation of election laws and other analogous cases and on the day of the election the resolution has not become final and executory, the BEI shall tally and count the votes of such disqualified candidate. (Emphasis supplied)

Respondent, therefore, is in error in assuming that the issuance of a temporary restraining order by this Court within five (5) days after the date of the promulgation of the assailed resolution on May 12, 2001, of the COMELEC en banc is the operative act that prevents it from attaining finality. The purpose of temporary restraining order was to enjoin the May 12, 2001 resolution of the COMELEC from being enforced despite the fact that, pursuant to COMELEC Resolution No. 4116, par. 3, as above quoted, the said resolution had not attained finality.

Second. Petitioner alleges that the COMELEC gravely abused its discretion in declaring him disqualified on the ground that he is not a resident of Tubaran. On the other hand, respondent argues that whether or not petitioner is a resident of Tubaran is a factual issue which has been thoroughly passed upon and determined by the Second Division of the COMELEC and later by the COMELEC en banc. Respondent echoes the ruling of the COMELEC in its resolution of May 12, 2001, which said that, as an “administrative body and a specialized constitutional body charged with the enforcement and administration of all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall, it has more than enough expertise in its field, and its findings or conclusions are generally respected and even given finality.”

With due regard for the expertise of the COMELEC, we find the evidence to be insufficient to sustain its resolution. We agree with the Solicitor General, to the contrary, that petitioner has duly proven that, although he was formerly a resident of the Municipality of Bayang, he later transferred residence to Tangcal in the Municipality of Tubaran as shown by his actual and physical presence therein for 10 years prior to the May 14, 2001 elections.

Section 39 of the Local Government Code (R.A. No. 7160) provides:

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 panglungsod, 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 language or dialect.

Our decisions have applied certain tests and concepts in resolving the issue of whether or not a candidate has complied with the residency requirement for elective positions. The principle of *animus revertendi* has been used to determine whether a candidate has an “intention to return” to the place where he seeks to be elected. Corollary to this is a determination whether there has been an “abandonment” of his former residence which signifies an intention to depart therefrom. In *Caasi v. Court of Appeals*,^[19] this Court set aside the appealed orders of the COMELEC and the Court of Appeals and annulled the election of the respondent as Municipal Mayor of Bolinao, Pangasinan on the ground that respondent’s immigration to the United States in 1984 constituted an abandonment of his domicile and residence in the Philippines. Being a green card holder, which was proof that he was a permanent resident or immigrant of the United States, and in the absence of any waiver of his status as such before he ran for election on January 18, 1988, respondent was held to be disqualified under §68 of the Omnibus Election Code of the Philippines (Batas Pambansa Blg. 881).

In *Co v. Electoral Tribunal of the House of Representatives*,^[20] respondent Jose Ong, Jr. was proclaimed the duly elected representative of the 2nd District of Northern Samar. The House of Representatives Electoral Tribunal (HRET) upheld his election against claims that he was not a natural born Filipino citizen and a resident of Laoang, Northern Samar. In sustaining the ruling of the HRET, this Court, citing *Faypon v. Quirino*,^[21]

applied the concept of *animus revertendi* or “intent to return,” stating that his absence from his residence in order to pursue studies or practice his profession as a certified public accountant in Manila or his registration as a voter other than in the place where he was elected did not constitute loss of residence. The fact that respondent made periodical journeys to his home province in Laoang revealed that he always had *animus revertendi*.

In *Abella v. Commission on Elections and Larrazabal v. Commission on Elections*,^[22] it was explained that the determination of a person’s legal residence or domicile largely depends upon the intention that may be inferred from his acts, activities, and utterances. In that case, petitioner Adelina Larrazabal, who had obtained the highest number of votes in the local elections of February 1, 1988 and who had thus been proclaimed as the duly elected governor, was disqualified by the COMELEC for lack of residence and registration qualifications, not being a resident nor a registered voter of Kananga, Leyte. The COMELEC ruled that the attempt of petitioner Larrazabal to 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 was proof that she considered herself a resident of Ormoc City. This Court affirmed the ruling of the COMELEC and held that petitioner Larrazabal had established her residence in Ormoc City, not in Kananga, Leyte, from 1975 up to the time that she ran for the position of Provincial Governor of Leyte on February 1, 1988. There was no evidence to show that she and her husband maintained separate residences, i.e., she at Kananga, Leyte and her husband at Ormoc City. The fact that she occasionally visited Kananga, Leyte through the years did not signify an intention to continue her residence after leaving that place.

In *Romualdez v. RTC, Br. 7, Tacloban City*,^[23] the Court held that “domicile” and “residence” are synonymous. The term “residence,” as used in the election law, imports not only an intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention. “Domicile” denotes a fixed permanent residence to which when absent for business or pleasure, or for like reasons, one intends to return. In that case, petitioner Philip G. Romualdez established his residence during the early 1980’s in Barangay Malbog, Tolosa, Leyte. It was held that the sudden departure from the country of petitioner, because of the EDSA People’s Power Revolution of 1986, to go into self-exile in the United States until favorable conditions had been established, was not voluntary so as to constitute an abandonment of residence. The Court explained that in order to acquire a new domicile by choice, there must concur (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile. There must be *animus manendi* coupled with *animus non revertendi*. The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be voluntary; and the residence at the place chosen for the new domicile must be actual.

The record shows that when petitioner and his wife Raida Guina Dimaporo got married in 1990, they resided in Tangcal, Tubaran. From then on, there was manifest intention on the part of petitioner to reside in Tubaran, which he deemed to be the place of his conjugal abode with his wife. The fact that he and his wife transferred residence from Bayang to Tubaran shows that petitioner was relinquishing his former place of residence in Bayang and that he intended Tubaran to be his place of domicile. Although petitioner worked as a private secretary of the mayor of Bayang, he went home to Tubaran everyday after work. This is proof of *animus manendi*.

Further, the evidence shows that in the May 11, 1998 election, petitioner was registered as a voter in Tubaran and that in fact he filed his certificate of candidacy although he later withdrew the same. In the May 8, 1999 registration of voters, he was again registered as a voter in Precinct No. 28-A of Barangay Tangcal in Tubaran.

In addition, the following bolster petitioners’ claim that since 1990 he has been a resident of Tubaran: (a) the continuous verification of household members in Tubaran conducted by the election officer showed that petitioner and his wife were members of household No. 13 in Barangay Tangcal, Tubaran; (b) petitioner co-owned an agricultural land in Tubaran; and (c) Hadji Bashir Ayonga and Samoranao Sarip retracted their previous affidavits

which they had earlier executed and said that they did not understand the contents thereof and did not know that the affidavits would be used in a disqualification case against petitioner.

Indeed, it is the fact of residence that is the decisive factor in determining whether or not an individual has satisfied the Constitution's residency qualification requirement. In holding petitioner not to be a resident of Tubaran, the COMELEC said:

Three (3) disinterested senior citizens, Hadji Bashir Ayonga, Hadji Taher Batawe and Saadori Buat, all from Tangcal, Tubaran executed a joint affidavit (Exhibits A to A-1) stating that the respondent has not at any time resided or lived in said barangay. Moreover, in Election Case Nos. 2001-237-T to 2001-244-T, the respondent admitted that he was living in Marawi City and was private secretary to Mayor Abdillah Ampatua (T.S.N., Election Case Nos. 2001-237-T to 2001-244-T). As opined by Hearing Officer Atty. Cristeto J. Limbaco, these statements made by the respondent in open court are considered judicial admissions which do not require proof and cannot be contradicted unless proved to have been made through palpable mistake, citing *Sta. Ana vs. Maliwat* (L-23-23, August 31, 1968). On May 3, 2001, respondent through counsel submitted a Motion to Admit Supplemental Memorandum alleging that "respondent could be a domicile of Tubaran even if he has lived and maintained residences in different places citing the case of *Marcos vs. COMELEC*, 248 SCRA 300, 302." The fact remains though that respondent in open court admitted that he was living in Marawi City. (T.S.N. of Election Case Nos. 2001-237-T to 2001-244-T).[24]

A candidate running for an elective office should at least have resided in the place where he seeks election for at least one (1) year immediately preceding the day of the election. Herein respondent is wanting in this respect.

In citing the joint affidavit of Hadji Bashir Ayonga, Hadji Taher Batawe and Saadori Buat, the COMELEC overlooked the fact that Hadji Bashir Ayonga subsequently repudiated his affidavit on the ground that the same had not been explained to him and he did not know that it would be used to disqualify petitioner. Hadji Bashir Ayonga affirmed that petitioner was a resident of Tubaran. Indeed, in its findings of fact, the COMELEC stated:

On March 8, 2001, witness for petitioner Hadji Bashir Ayonga executed an Affidavit of Desistance thereby withdrawing his affidavit and stated that he did not know the consequences of signing the affidavit he executed on February 14, 2001 as the same was not explained to him and would be used in a disqualification case against the respondent. A similar affidavit was also filed by Samoranao Sarip withdrawing his prior affidavit and stating that he did not know the consequences of his signing said affidavit of February 17, 2001.[25]

Apparently, the COMELEC (Second Division) forgot its own findings.

Respondent claims that in Election Case Nos. 2001-237-T to 2001-244-T for exclusion of petitioner as a voter of Tubaran, petitioner admitted that he was not a resident of that municipality but of Marawi City. Petitioner's testimony is as follows:

Atty. P. Dimaampao:

MAUYAG PAPANDAYAN, Jr., what is your job now?

WITNESS:

I'm the private Secretary of Mayor Abdillah Ampatua.

Atty. P. Dimaampao:

For how long?

WITNESS:

Since he was elected Mayor of Bayang, Lanao del Sur.

Atty. P. Dimaampao:

Are you residing in Bayang, Lanao del Sur.

WITNESS:

No, I'm in Tubaran, Lanao del Sur. And I was living in Marawi City.[26]

Petitioner's statement that "[he] was living in Marawi City" cannot be read as saying he was a resident of Marawi City, because, when asked whether he was residing in Bayang, Lanao del Sur, he replied: "No, I'm in Tubaran, Lanao del Sur." What he seems to be saying is that although he worked as a private secretary of the Mayor of Bayang, he was not a resident of Bayang, because he was living in Tubaran.

When the evidence of the alleged lack of residence qualification of a candidate for an elective position is weak or inconclusive and it clearly appears that the purpose of the law would not be thwarted by upholding the victor's right to the office, the will of the electorate should be respected.[27] For the purpose of election laws is to give effect to, rather than frustrate, the will of the voters.[28] To successfully challenge petitioner's disqualification, respondent must clearly demonstrate that petitioner's ineligibility is so patently antagonistic to constitutional and legal principles that overriding such ineligibility and thereby giving effect to the apparent will of the people would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote.[29] Respondent failed to substantiate her claim that petitioner is ineligible to be mayor of Tubaran.

WHEREFORE, the petition is GRANTED and the assailed resolution of the COMELEC (Second Division), dated May 8, 2001, disqualifying petitioner Maanyag B. Papandayan, Jr. as a candidate for municipal mayor in Tubaran, Lanao del Sur, and the resolution, dated May 12, 2001, of the COMELEC en banc, denying petitioner's motion for reconsideration, are hereby ANNULLED and SET ASIDE. The temporary restraining order heretofore issued is made PERMANENT.

SO ORDERED.

Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

Davide, Jr., C.J., Melo, Kapunan, and Austria-Martinez, on official leave.

Corona, J., took no part in deliberation of this case.

[1] Per Presiding Commissioner Ralph C. Lantion and concurred in by Commissioner Florentino A. Tuason, Jr.

[2] Rollo, pp. 50-51; Annex C to C-1 of respondent's Petition for Disqualification (of petitioner).

[3] Id., p. 52; Annex C-2 of respondent's Petition for Disqualification (of petitioner).

[4] Id., p. 53; Annex D of respondent's Petition for Disqualification (of petitioner).

[5] Id., pp. 54-59; Annex E of Petition.

[6] Id., p. 60, Annex 1 of petitioner's Answer (to respondent's Petition for Disqualification).

- [7] Id., p. 61; Annex 2 of petitioner's Answer (to respondent's Petition for Disqualification).
- [8] Id., p. 62; Annex 3 of petitioner's Answer (to respondent's Petition for Disqualification).
- [9] Id., p. 63; Annex 4 of petitioner's Answer (to respondent's Petition for Disqualification).
- [10] Id., p. 64; Annex 5 of petitioner's Answer (to respondent's Petition for Disqualification).
- [11] Id., p. 65; Annex 6 of petitioner's Answer (to respondent's Petition for Disqualification).
- [12] Id., p. 66; Annex 7 of petitioner's Answer (to respondent's Petition for Disqualification).
- [13] Id., p. 67; Annex 8 of petitioner's Answer (to respondent's Petition for Disqualification).
- [14] Id., p. 40; Annex C of Petition.
- [15] Per Commissioner Rufino S.B. Javier and concurred in by Commissioners Luzviminda G. Tancangco and Resurreccion Z. Borra.
- [16] Rollo, pp. 101-104.
- [17] Id., p. 179.
- [18] Id., pp. 214-215; Annex C of Reply to the Comment of the Private Respondent.

[19] 191 SCRA 229 (1990).

[20] 199 SCRA 692 (1991).

[21] 96 Phil. 294 (1954).

[22] 201 SCRA 253 (1991).

[23] 226 SCRA 408 (1993).

- [24] COMELEC (Second Division) Resolution dated May 8, 2002; Rollo, p. 28.
- [25] Id.; Rollo, p. 27.
- [26] Rollo, pp. 76-77; Annex G to G-1 of Petition.
- [27] *Perez v. Commission on Elections*, 317 SCRA 641 (1999) citing *Gallego v. Vera*, 73 Phil. 453, 459 (1941).
- [28] *Millare v. Gironella*, 122 SCRA 623 (1983); *Pacis v. COMELEC*, 25 SCRA 377 (1968); *Cauton v. COMELEC*, 19 SCRA 912 (1967); *Silverio v. Castro*, 19 SCRA 520 (1967); *Canceran v. COMELEC*, 107 Phil. 607 (1960).
- [29] *Torayno, Sr. v. Commission on Elections*, 337 SCRA 574 (2000) citing *Frivaldo v. COMELEC*, 257 SCRA 727 (1996).

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