

ENGR. ERNESTO T. MATUGAS, PETITIONER, VS. COMMISSION ON ELECTIONS AND ROBERT LYNDON S. BARBERS, RESPONDENTS.

G.R. No. 151944. January 20, 2004

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TINGA, J.:

The Local Government Code of 1991[1] requires that an elective local official be a citizen of the Philippines.[2] Whether the incumbent Governor of Surigao del Norte is a citizen of the Philippines and, therefore, qualified to hold such office is the issue in this case.

On February 28, 2001, private respondent Robert Lyndon S. Barbers filed his certificate of candidacy for the position of Governor of Surigao del Norte for the May 14, 2001 elections. On April 10, 2001, petitioner Ernesto T. Matugas, himself a candidate for the same post, filed with the Commission on Elections (COMELEC) a Petition to Disqualify private respondent as candidate. The Petition alleged, among other grounds, that private respondent is not a Filipino citizen.

In support of this claim, petitioner offered in evidence a copy of a letter-request dated August 25, 2000 from a certain Jesus Agana, a “confidential agent” of the Bureau of Immigration, addressed to one George Clarke, purportedly of the United States Embassy. Below the request was the reply of said George Clarke stating that the “subject” was naturalized as an American citizen on October 11, 1991 in Los Angeles, California. The document[3] reads:

Dear Mr. Clark [sic]:

Per our phone conversation, may I request for [sic] a certification from your Embassy regarding the US citizenship of MR. ROBERT LYNDON S. BARBERS who was born on July 15, 1968.

Kindly fax your reply, addressed to the undersigned at Tel. No. (02) 3384456.

Thank you and regards.

Very truly yours,

(Sgd.)

JESUS AGANA

Confidential Agent

Jesus Agana:

SUBJECT was naturalized on October 11, 1991 in Los Angeles, CA.

(Sgd.)

G.R. Clarke, INS/Manila

Petitioner also presented a Certification[4] issued by the Bureau of Immigration and Deportation (BID) dated 1 September 2000 containing Barbers’ travel records and indicating in certain entries that private respondent is an

American citizen. The Certification states:

CERTIFICATION

THIS IS TO CERTIFY THAT the name BARBERS, ROBERT LYNDON S, American, appears in our available Computer Database/Passenger manifest/IBM listing on file as of September 1, 2000 10:27 am with the following travel records:

Date of Departure : 01/28/1997

Destination : OSA-Osaka

Flight No. : NWo26-Northwest Airlines

Passport No. : 034354245

Nationality : Filipino

Date of Birth : 07/15/1968

Phil. Address : 6 Hercules St. Bel Air II Makati

Immig. Status : RP

Immig. Officer : not stated

Date of Arrival : 02/12/1998

Origin : LON-London

Flight No. : PR731-Phil. Airlines

Passport No. : 034354245

Nationality : American

Date of Birth : American

Phil. Address : 6 Hercules St. Bel Air II Makati

Immig. Status : BB365

Immig. Officer : REGALA

Date of Arrival : 07/31/1998

Origin : BKK-Bangkok

Flight No. : TG620-Thai Airways

Passport No. : OF006673

Nationality : American

Date of Birth : 07/15/1968

Phil. Address : 16 Hercules St. Bel Air II Makati

Immig. Status : BB365

Immig. Officer : SOR

FURTHER, THIS IS TO CERTIFY THAT the name BARBERS, ROBERT LYNDON SMITH, American, appears in our Computer Database/Passenger manifest/IBM listing on file with the following travel records:

Date of Departure : 07/27/1998

Destination : not available

Flight No. : TG621-Thai Airways

Passport No. : not available

Nationality : Filipino

Date of Birth : 07/15/1968

Phil. Address : not available

Immig. Status : not available

Immig. Officer : RACHO

This certification is issued upon request of Mr. Bebot Pomoy for whatever legal purpose it may serve.

Verified by : Edilberto Orbase Computer Section

Date & Time : September 1, 2000 10:27 am

(Sgd.)

ATTY. FELINO C. QUIRANTE, JR.

Acting Chief, Admin. Division

In addition, petitioner submitted a Certification[5] issued by the Special Committee on Naturalization of the Office of the Solicitor General stating that, based on their records, there is no pending petition by private respondent for repatriation. Neither has one been granted in his favor.

In the meantime, private respondent garnered the highest number of votes in the gubernatorial race. On May 17, 2001, petitioner filed a Motion for Suspension/Annulment of Proclamation of private respondent. The Motion, however, was overtaken by subsequent events when, on the following day, May 18, 2001, private respondent was proclaimed the duly elected governor of Surigao del Norte.

On July 5, 2001, the Second Division of the COMELEC issued a Resolution dismissing for lack of merit the Petition to Disqualify. The COMELEC found “little or no probative value” in the notation of George Clarke to Agana’s letter-request.[6] While noting that the BID certification involving the travel records of Robert Lyndon S. Barbers stated that he was an American, the COMELEC held that “there is no other independent evidence... to justify petitioner’s claim that respondent has renounced his allegiance to the Philippines at any time.”[7]

Petitioner filed a Motion for Reconsideration with the COMELEC En Banc, which on January 8, 2002 dismissed the Motion and affirmed the Resolution of the Second Division.

Petitioner thus instituted these proceedings for certiorari, claiming that the COMELEC committed grave abuse of discretion in denying his Petition to Disqualify.[8] He maintains that private respondent was not a Filipino citizenship at the time of his election.

Basic in the law of evidence is that one who alleges a fact has the burden of proving it.[9] In administrative cases, the quantum of proof required is substantial evidence.[10] Petitioner did not overcome his burden. The documentary evidence he submitted fails to establish that private respondent is not a Filipino citizen.

The document containing the notation of George Clarke does not prove that private respondent is indeed a naturalized American citizen. For the purpose of their presentation in evidence, documents are either public or private. Public documents include the written official acts or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country.[11] The record of such public documents may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record. If the record is not kept in the Philippines, the attested copy should be accompanied by a certificate that such officer has custody thereof.[12]

The grant of United States citizenship by naturalization is an official act of the United States. The document containing the record of this act is, therefore, a public document and, following the rule cited above, this document can only be evidenced by its official publication or a copy duly attested by the officer having legal custody thereof.

The notation in the letter-inquiry of Jesus Agana is neither an official publication of the document that contains the record of private respondent's naturalization, nor a copy attested by the officer who has legal custody of the record. Petitioner did not show if Clarke, the notation's alleged author, is the officer charged with the custody of such record.

Furthermore, Section 7, Rule 130 of the Rules of Court states that when the original of a document is in the custody of a public officer or is recorded in a public office, as in this case, the contents of said document may be proved by a certified copy issued by the public officer in custody thereof. The subject letter-inquiry, which contains the notation, appears to be a mere photocopy, not a certified copy.

The other document relied upon by petitioner is the Certification dated 1 September 2000 issued by the BID. Petitioner submits that private respondent has declared that he is an American citizen as shown by said Certification and, under Section 26, Rule 130 of the Rules of Court, such declaration may be given in evidence against him.

The rule cited by petitioner does not apply in this case because the rule pertains to the admissibility of evidence. There is no issue here as to the admissibility of the BID Certification; the COMELEC did not hold that the same was inadmissible. In any case, the BID Certification suffers from the same defect as the notation from the supposed US Embassy official. Said Certification is also a photocopy, not a certified copy.

Moreover, the certification contains inconsistent entries regarding the "nationality" of private respondent. While some entries indicate that he is "American," other entries state that he is "Filipino."

Petitioner also attached in his Memorandum before this Court another document,[13] obviously a photocopy, which reads in full:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
U.S. COURTHOUSE
312 NORTH SPRING STREET, SUITE 329
LOS ANGELES, CALIFORNIA, 90012

August 1, 2001

The official Naturalization the United States District Court of California shows the following:

Name: Robert Lyndon Barbers

Date of Birth: July 15, 1968

Petition No.: 890573

Alien No.: A40 460 660

Certificate No.: 14738741

Date of Naturalization: October 11, 1991

(Sgd.)

Deputy Clerk Abel Martinez

The above document was attached to an “Authentication,”[14] also a photocopy, stating:

CONSULATE GENERAL OF THE PHILIPPINES)

CITY OF LOS ANGELES)S.S.

STATE OF CALIFORNIA, U.S.A.

AUTHENTICATION

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, CRISTINA G. ORTEGA, CONSUL at Los Angeles, California, duly commissioned and qualified, do hereby certify that ABEL MARTINEZ whose seal/signature appears on the annexed certificate was, at the time he signed the annexed certificate, A Deputy Clerk of the United States District Court, Central District of California and verily believe that his seal/signature affixed thereto is genuine.

For the contents of the annexed document, this Consulate General assumes no responsibility.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Consulate General of the Republic of the Philippines at Los Angeles, California, U.S.A., to affixed this day of 30 August 2001.

(Sgd.)

CRISTINA G. ORTEGA

Consul

of the Republic of the Philippines

The annexed document is an Information

of Naturalization Re: Robert Lyndon

Barbers executed by United States District

Court, Central District of California

Subsequently, petitioner filed a Manifestation with Motion for Leave to Admit Original Documents, appending thereto the originals[15] of the above documents.

These new documents likewise cannot be admitted in evidence. To repeat, Section 24, Rule 132 of the Rules of Court requires that if the public document or the public record is not kept in the Philippines, its official publication or its copy duly attested by the officer in charge of the custody of the same must be accompanied by a certificate that such officer has the custody. Said certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept and authenticated by the seal of his office. In this case, the Authentication executed by Cristina G. Ortega, the Philippine Consul in Los Angeles, California merely states that Abel Martinez is the Deputy Clerk of the United States District Court, Central District of California. It does not state that said Deputy Clerk has the custody of the above record.

There is another cogent reason that precludes the admission of these documents. Petitioner calls upon this Court to consider alleged new evidence not presented before the COMELEC, a course of action clearly beyond the courts' certiorari powers. In *Lovina and Montila v. Moreno and Yonzon*,^[16] the Court of First Instance (CFI) conducted a trial de novo even though the Secretary of Public Works and Communications, in the exercise of his administrative powers, had made his own independent findings of fact. This Court reversed the decision of the CFI because:

The findings of the Secretary can not be enervated by new evidence not laid before him, for that would be tantamount to holding a new investigation, and to substitute for the discretion and judgment of the Secretary the discretion and judgment of the court, to whom the statute had not entrusted the case. It is immaterial that the present action should be one for prohibition or injunction and not one for certiorari; in either event the case must be resolved upon the evidence submitted to the Secretary, since a judicial review of executive decisions does not import a trial de novo, but only an ascertainment of whether the executive findings are not in violation of the Constitution or of the laws, and are free from fraud or imposition, and whether they find reasonable support in the evidence....

Similarly, petitioner in this case cannot “enervate” the COMELEC’s findings by introducing new evidence before this Court, which in any case is not a trier of facts, and then ask it to substitute its own judgment and discretion for that of the COMELEC.

The rule in appellate procedure is that a factual question may not be raised for the first time on appeal,^[17] and documents forming no part of the proofs before the appellate court will not be considered in disposing of the issues of an action.^[18] This is true whether the decision elevated for review originated from a regular court^[19] or an administrative agency or quasi-judicial body,^[20] and whether it was rendered in a civil case,^[21] a special proceeding,^[22] or a criminal case.^[23] Piecemeal presentation of evidence is simply not in accord with orderly justice.^[24]

The same rules apply with greater force in certiorari proceedings. Indeed, it would be absurd to hold public respondent guilty of grave abuse of discretion for not considering evidence not presented before it. The patent unfairness of petitioner’s plea, prejudicing as it would public and private respondents alike, militates against the admission and consideration of the subject documents.

Finally, petitioner in his Memorandum^[25] invokes the case of *Yu v. Defensor-Santiago*,^[26] holding that a naturalized Filipino citizen effectively renounces his Filipino citizenship when he applies for and is issued a Portuguese passport, and declares his nationality as a Portuguese in commercial documents he signed. That case, however, has no relevance here because the documents submitted in this case, assuming that they constitute substantial evidence that private respondent indeed renounced his Filipino citizenship, are inadmissible. In other words, there is no evidence in this case of any renunciation.

There is grave abuse of discretion amounting to lack of jurisdiction when the respondent board, tribunal or officer exercising judicial functions exercised its judgment in a capricious, whimsical, arbitrary or despotic manner, as when the assailed order has no basis both in fact and in law.^[27] In this case, the Petition to Disqualify is not supported by substantial evidence. Hence, the COMELEC did not commit grave abuse of discretion in issuing the assailed Resolutions dismissing the Petition.

WHEREFORE, the Petition is DISMISSED.

SO ORDERED.

Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., and Azcuna, JJ., concur.

Davide, Jr., C.J., concur, but without prejudice to a more appropriate action.

[1] Rep. Act 7160.

[2] Section 39 of said Code provides:

Section 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 sanggunian 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.

(b) Candidates for the position of governor, vice-governor or member of the sangguniang panlalawigan, or mayor, vice mayors or member of the sangguniang panlungsod of highly urbanized cities must be at least twenty-three (23) years of age on election day.

[3] Annex C, Petition to Disqualify; Records, p. 53.

[4] Annex D, Petition to Disqualify; Records, pp. 54-55.

[5] Annex G, Petition for Disqualification; Records, p. 58.

[6] Records, p. 198.

[7] Id., at 199.

[8] While this case was pending before this Court, Congress approved on August 29, 2003 Republic Act No. 9225, entitled “An Act Making the Citizenship of Philippine Citizens who Acquire Foreign Citizenship Permanent, Amending for the purpose Commonwealth Act No. 63, as amended, and for other purposes.” The provisions of R.A. 9225 are as follows:

“Section 1. Short Title. – This Act shall be known as the “Citizenship Retention and Re-acquisition Act of 2003.”

“Sec. 2. Declaration of Policy. – It is hereby declared the policy of the State that all Philippine citizens who become citizens of another country shall be deemed not to have lost their citizenship under the conditions of this Act.

“Sec. 3. Retention of Philippine Citizenship. – Any provision of law to the contrary notwithstanding, natural-born citizens of the Philippines who have lost their citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic:

‘I _____ solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I will impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.’

Natural-born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country

shall retain their citizenship upon taking the aforesaid oath.

“Sec. 4. Derivative Citizenship. – The unmarried child, whether legitimate or adopted, below eighteen (18) years of age, of those who re-acquire Philippine citizenship upon effectivity of this Act shall be deemed citizens of the Philippines.

“Sec. 5. Civil and Political Rights and Liabilities. – Those who retain or re-acquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

“(1) Those intending to exercise their right of suffrage must meet the requirements under Section 1, Article V of the Constitution, Republic Act No. 9189, otherwise known as “The Overseas Absentee Voting Act of 2003” and other existing laws;

“(2) Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath;

“(3) Those appointed to any public office shall subscribe and swear to an oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of office: Provided, That they renounce their oath of allegiance to the country where they took that oath;

“(4) Those intending to practice their profession in the Philippines shall apply with the proper authority for a license or permit to engage in such practice; and

“(5) That right to vote or be elected or appointed to any public office in the Philippines cannot be exercised by, or extended to, those who:

“(a) are candidates for or are occupying any public office in the country of which they are naturalized citizens; and/or

“(b) are in active service as commissioned or non-commissioned officers in the armed forces of the country which are naturalized citizens.

“Sec. 6. Separability Clause. – If any section or provision of this Act is held unconstitutional or invalid, any other section or provision not affected thereby shall remain valid and effective.

“Sec. 7. Repealing Clause. – All laws, decrees, orders, rules and regulations inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

“Sec. 8. Effectivity Clause. – This Act shall take effect after fifteen (15) days following its publication in the Official Gazette or two (2) newspapers of general circulation.”

[9] Cortes v. CA, G.R. No. 121772, 13 January 2003.

[10] RULES OF COURT, rule 133, sec. 5.

[11] Section 19, Rule 132 of the Rules of Court: provides:

SEC. 19. Classes of documents. — For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and

tribunals, and public officers, whether of the Philippines, or of a foreign country;

(b) Documents acknowledged before a notary public except last wills and testaments; and

(c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private.

[12] Section 24, Rule 132 of the Rules of Court states in full:

SEC. 24. Proof of official record. — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

[13] Rollo, p. 303.

[14] *Id.*, at 304.

[15] *Id.*, at 346-347.

[16] 113 Phil. 11401 (1963), cited in *Pabiling v. Parinacio, et al.*, 133 Phil. 103 (1968), and *Santos v. Hon. Moreno et al.*, 129 Phil. 383 (1967).

[17] *Telephone Engineering & Service Co., Ind. v. WCC*, G.R. No. L-28694, 13 May 1984, 104 SCRA 354.

[18] *De Castro v. Court of Appeals*, 75 Phil. 824.

[19] *Ibid.*

[20] *Supra* note 17.

[21] *Supra* note 18; *Dayrit v. Gonzales*, 7 Phil. 182 (1906).

[22] *Gonzales-Precilla v. Rosario*, 144 Phil. 398 (1970).

[23] *People v. Ocampo*, G.R. Nos. 90247-49, 13 February 1992, 206 SCRA 223; *People v. Go*, G.R. No. 11601, 14 March 2001, 354 SCRA 338.

[24] *Cansino v. Court of Appeals*, G.R. No. 125799, 21 August 2003.

[25] *Id.*, at 276.

[26] G.R. No. 83882, 24 January 1989, 169 SCRA 364.

[27] *The Senate Blue Ribbon Committee v. Hon. Jose B. Majaducon*, GR No. 136760, *Pimentel v. Hon. Jose S. Majaducon*, GR No. 138378, 29 July 2003, citing *Ban Hua Flores v. Office of the Ombudsman*, G.R. No. 136769, 17 September 2002.

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