LOIDA NICOLAS-LEWIS, GREGORIO B. MACABENTA, ALEJANDRO A. ESCLAMADO, ARMANDO B. HEREDIA, REUBEN S. SEGURITAN, ERIC LACHICA FURBEYRE, TERESITA A. CRUZ, JOSEFINA OPENA DISTERHOFT, ...

G.R. NO. 162759. August 04, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

In this petition for certiorari and mandamus, petitioners, referring to themselves as "duals" or dual citizens, pray that they and others who retained or reacquired Philippine citizenship under Republic Act (R.A.) No. 9225, the Citizenship Retention and Re Acquisition Act of 2003, be allowed to avail themselves of the mechanism provided under the Overseas Absentee Voting Act of 2003[1] (R.A. 9189) and that the Commission on Elections (COMELEC) accordingly be ordered to allow them to vote and register as absentee voters under the aegis of R.A. 9189.

The facts:

Petitioners are successful applicants for recognition of Philippine citizenship under R.A. 9225 which accords to such applicants the right of suffrage, among others. Long before the May 2004 national and local elections, petitioners sought registration and certification as "overseas absentee voter" only to be advised by the Philippine Embassy in the United States that, per a COMELEC letter to the Department of Foreign Affairs dated September 23, 2003[2], they have yet no right to vote in such elections owing to their lack of the one-year residence requirement prescribed by the Constitution. The same letter, however, urged the different Philippine posts abroad not to discontinue their campaign for voter's registration, as the residence restriction adverted to would contextually affect merely certain individuals who would likely be eligible to vote in future elections.

Prodded for clarification by petitioner Loida Nicolas-Lewis in the light of the ruling in Macalintal vs. COMELEC [3] on the residency requirement, the COMELEC wrote in response:

> Although R.A. 9225 enjoys the presumption of constitutionality ..., it is the Commission's position that those who have availed of the law cannot exercise the right of suffrage given under the OAVL for the reason that the OAVL was not enacted for them. Hence, as Filipinos who have merely re-acquired their citizenship on 18 September 2003 at the earliest, and as law and jurisprudence now stand, they are considered regular voters who have to meet the requirements of residency, among others under Section 1, Article 5 of the Constitution. [4]

Faced with the prospect of not being able to vote in the May 2004 elections owing to the COMELEC's refusal to include them in the National Registry of Absentee Voters, petitioner Nicolas-Lewis et al.,[5] filed on April 1, 2004 this petition for certiorari and mandamus.

A little over a week before the May 10, 2004 elections, or on April 30, 2004, the COMELEC filed a Comment,[6] therein praying for the denial of the petition. As may be expected, petitioners were not able to register let alone

vote in said elections.

On May 20, 2004, the Office of the Solicitor General (OSG) filed a Manifestation (in Lieu of Comment), therein stating that "all qualified overseas Filipinos, including dual citizens who care to exercise the right of suffrage, may do so", observing, however, that the conclusion of the 2004 elections had rendered the petition moot and academic.[7]

The holding of the 2004 elections had, as the OSG pointed out, indeed rendered the petition moot and academic, but insofar only as petitioners' participation in such political exercise is concerned. The broader and transcendental issue tendered or subsumed in the petition, i.e., the propriety of allowing "duals" to participate and vote as absentee voter in future elections, however, remains unresolved.

Observing the petitioners' and the COMELEC's respective formulations of the issues, the same may be reduced into the question of whether or not petitioners and others who might have meanwhile retained and/or reacquired Philippine citizenship pursuant to R.A. 9225 may vote as absentee voter under R.A. 9189.

The Court resolves the poser in the affirmative, and thereby accords merit to the petition.

In esse, this case is all about suffrage. A quick look at the governing provisions on the right of suffrage is, therefore, indicated.

We start off with Sections 1 and 2 of Article V of the Constitution, respectively reading as follows:

> SECTION 1. Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election. xxx.
>
> SEC 2. The Congress shall provide ... a system for absentee voting by qualified Filipinos abroad.

In a nutshell, the aforequoted Section 1 prescribes residency requirement as a general eligibility factor for the right to vote. On the other hand, Section 2 authorizes Congress to devise a system wherein an absentee may vote, implying that a non-resident may, as an exception to the residency prescription in the preceding section, be allowed to vote.

In response to its above mandate, Congress enacted R.A. 9189 - the OAVL[8] - identifying in its Section 4 who can vote under it and in the following section who cannot, as follows:

> Section 4. Coverage. – All citizens of the Philippines abroad, who are not otherwise disqualified by law, at least eighteen (18) years of age on the day of elections, may vote for president, vice-president, senators and party-list representatives.
>
> Section 5. Disqualifications. – The following shall be disqualified from voting under this Act:
>
> (a) Those who have lost their Filipino citizenship in accordance with Philippine laws;
>
> (b) Those who have expressly renounced their Philippine citizenship and who have pledged allegiance to a foreign country;
>
> (c) Those who have ... [been] convicted in a final judgment by a court or tribunal of an offense punishable by imprisonment of not less than one (1) year, including those who have ... been found guilty of Disloyalty as defined under Article 137 of the Revised Penal Code, ...;
>
> (d) An immigrant or a permanent resident who is recognized as such in the host country, unless he/she executes, upon registration, an affidavit prepared for the purpose by the Commission declaring that he/she shall resume actual physical permanent residence in the Philippines not later than three (3) years from approval of

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> his/her registration under this Act. Such affidavit shall also state that he/she has not applied for citizenship in another country. Failure to return shall be the cause for the removal of the name of the immigrant or permanent resident from the National Registry of Absentee Voters and his/her permanent disqualification to vote in absentia.
>
> (e) Any citizen of the Philippines abroad previously declared insane or incompetent by competent authority .... (Words in bracket added.)

Notably, Section 5 lists those who cannot avail themselves of the absentee voting mechanism. However, Section 5(d) of the enumeration respecting Filipino immigrants and permanent residents in another country opens an exception and qualifies the disqualification rule. Section 5(d) would, however, face a constitutional challenge on the ground that, as narrated in Macalintal, it -

> ... violates Section 1, Article V of the 1987 Constitution which requires that the voter must be a resident in the Philippines for at least one year and in the place where he proposes to vote for at least six months immediately preceding an election. [The challenger] cites ... Caasi vs. Court of Appeals [9] to support his claim [where] the Court held that a "green card" holder immigrant to the [US] is deemed to have abandoned his domicile and residence in the Philippines.
>
> [The challenger] further argues that Section 1, Article V of the Constitution does not allow provisional registration or a promise by a voter to perform a condition to be qualified to vote in a political exercise; that the legislature should not be allowed to circumvent the requirement of the Constitution on the right of suffrage by providing a condition thereon which in effect amends or alters the aforesaid residence requirement to qualify a Filipino abroad to vote. He claims that the right of suffrage should not be granted to anyone who, on the date of the election, does not possess the qualifications provided for by Section 1, Article V of the Constitution.[10] (Words in bracket added.)

As may be recalled, the Court upheld the constitutionality of Section 5(d) of R.A. 9189 mainly on the strength of the following premises:

> As finally approved into law, Section 5(d) of R.A. No. 9189 specifically disqualifies an immigrant or permanent resident who is "recognized as such in the host country" because immigration or permanent residence in another country implies renunciation of one's residence in his country of origin. However, same Section allows an immigrant and permanent resident abroad to register as voter for as long as he/she executes an affidavit to show that he/she has not abandoned his domicile in pursuance of the constitutional intent expressed in Sections 1 and 2 of Article V that "all citizens of the Philippines not otherwise disqualified by law" must be entitled to exercise the right of suffrage and, that Congress must establish a system for absentee voting; for otherwise, if actual, physical residence in the Philippines is required, there is no sense for the framers of the Constitution to mandate Congress to establish a system for absentee voting.
>
> Contrary to the claim of [the challenger], the execution of the affidavit itself is not the enabling or enfranchising act. The affidavit required in Section 5(d) is not only proof of the intention of the immigrant or permanent resident to go back and resume residency in the Philippines, but more significantly, it serves as an explicit expression that he had not in fact abandoned his domicile of origin. Thus, it is not correct to say that the execution of the affidavit under Section 5(d) violates the Constitution that proscribes "provisional registration or a promise by a voter to perform a condition to be qualified to vote in a political exercise." [11]

Soon after Section 5(d) of R.A. 9189 passed the test of constitutionality, Congress enacted R.A. 9225 the relevant portion of which reads:

> 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 Philippine citizenship under the conditions of this Act.

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> SEC. 3. Retention of Philippine Citizenship. – Any provision of law to the contrary notwithstanding, natural-born citizens of the Philippines who have lost their Philippine 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:
>
> xxx xxx xxx
>
> Natural-born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.
>
> SEC. 4. Derivative Citizenship. – The unmarried child, whether legitimate, illegitimate 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 ...;
>
> 3) xxx xxx xxx.
>
> (4) xxx xxx xxx;
>
> (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 they are naturalized citizens.

After what appears to be a successful application for recognition of Philippine citizenship under R.A. 9189, petitioners now invoke their right to enjoy ... political rights, specifically the right of suffrage, pursuant to Section 5 thereof.

Opposing the petitioners' bid, however, respondent COMELEC invites attention to the same Section 5 (1) providing that "duals" can enjoy their right to vote, as an adjunct to political rights, only if they meet the requirements of Section 1, Article V of the Constitution, R.A. 9189 and other existing laws. Capitalizing on what at first blush is the clashing provisions of the aforecited provision of the Constitution, which, to repeat, requires residency in the Philippines for a certain period, and R.A. 9189 which grants a Filipino non-resident absentee voting rights,[12] COMELEC argues:

> - 'DUALS' MUST FIRST ESTABLISH THEIR DOMICILE/ RESIDENCE IN THE PHILIPPINES
>
> 4.01. The inclusion of such additional and specific requirements in RA 9225 is logical. The 'duals,' upon renouncement of their Filipino citizenship and acquisition of foreign citizenship, have practically and legally abandoned their domicile and severed their legal ties to the homeland as a consequence. Having subsequently

> acquired a second citizenship (i.e., Filipino) then, 'duals' must, for purposes of voting, first of all, decisively and definitely establish their domicile through positive acts; [13]

The Court disagrees.

As may be noted, there is no provision in the dual citizenship law - R.A. 9225 - requiring "duals" to actually establish residence and physically stay in the Philippines first before they can exercise their right to vote. On the contrary, R.A. 9225, in implicit acknowledgment that 'duals' are most likely non-residents, grants under its Section 5(1) the same right of suffrage as that granted an absentee voter under R.A. 9189. It cannot be overemphasized that R.A. 9189 aims, in essence, to enfranchise as much as possible all overseas Filipinos who, save for the residency requirements exacted of an ordinary voter under ordinary conditions, are qualified to vote. Thus, wrote the Court in Macalintal:

> It is clear from these discussions of the ... Constitutional Commission that [it] intended to enfranchise as much as possible all Filipino citizens abroad who have not abandoned their domicile of origin. The Commission even intended to extend to young Filipinos who reach voting age abroad whose parents' domicile of origin is in the Philippines, and consider them qualified as voters for the first time.
>
> It is in pursuance of that intention that the Commission provided for Section 2 [Article V] immediately after the residency requirement of Section 1. By the doctrine of necessary implication in statutory construction, ..., the strategic location of Section 2 indicates that the Constitutional Commission provided for an exception to the actual residency requirement of Section 1 with respect to qualified Filipinos abroad. The same Commission has in effect declared that qualified Filipinos who are not in the Philippines may be allowed to vote even though they do not satisfy the residency requirement in Section 1, Article V of the Constitution.
>
> That Section 2 of Article V of the Constitution is an exception to the residency requirement found in Section 1 of the same Article was in fact the subject of debate when Senate Bill No. 2104, which became R.A. No. 9189, was deliberated upon on the Senate floor, thus:
>
> Senator Arroyo. Mr. President, this bill should be looked into in relation to the constitutional provisions. I think the sponsor and I would agree that the Constitution is supreme in any statute that we may enact.
>
> Let me read Section 1, Article V, of the Constitution .....
>
> xxx xxx xxx
>
> Now, Mr. President, the Constitution says, "who shall have resided in the Philippines." They are permanent immigrants. They have changed residence so they are barred under the Constitution. This is why I asked whether this committee amendment which in fact does not alter the original text of the bill will have any effect on this?
>
> Senator Angara. Good question, Mr. President. And this has been asked in various fora. This is in compliance with the Constitution. One, the interpretation here of "residence" is synonymous with "domicile."
>
> As the gentleman and I know, Mr. President, "domicile" is the intent to return to one's home. And the fact that a Filipino may have been physically absent from the Philippines and may be physically a resident of the United States, for example, but has a clear intent to return to the Philippines, will make him qualified as a resident of the Philippines under this law.
>
> This is consistent, Mr. President, with the constitutional mandate that we – that Congress – must provide a franchise to overseas Filipinos.
>
> If we read the Constitution and the suffrage principle literally as demanding physical presence, then there is no way we can provide for offshore voting to our offshore kababayan, Mr. President.

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> Senator Arroyo. Mr. President, when the Constitution says, in Section 2 of Article V, it reads: "The Congress shall provide a system for securing the secrecy and sanctity of the ballot as well as a system for absentee voting by qualified Filipinos abroad."
>
> The key to this whole exercise, Mr. President, is "qualified." In other words, anything that we may do or say in granting our compatriots abroad must be anchored on the proposition that they are qualified. Absent the qualification, they cannot vote. And "residents" (sic) is a qualification.
>
> xxx xxx xxx
>
> Look at what the Constitution says – "In the place wherein they propose to vote for at least six months immediately preceding the election."
>
> Mr. President, all of us here have run (sic) for office.
>
> I live in Makati. My neighbor is Pateros .... We are separated only by a creek. But one who votes in Makati cannot vote in Pateros unless he resides in Pateros for six months. That is how restrictive our Constitution is. .....
>
> As I have said, if a voter in Makati would want to vote in Pateros, yes, he may do so. But he must do so, make the transfer six months before the election, otherwise, he is not qualified to vote.
>
> xxx xxx xxx
>
> Senator Angara. It is a good point to raise, Mr. President. But it is a point already well-debated even in the constitutional commission of 1986. And the reason Section 2 of Article V was placed immediately after the six-month/one-year residency requirement is to demonstrate unmistakably that Section 2 which authorizes absentee voting is an exception to the six-month/one-year residency requirement. That is the first principle, Mr. President, that one must remember.
>
> The second reason, Mr. President, is that under our jurisprudence ... – "residency" has been interpreted as synonymous with "domicile."
>
> But The third more practical reason, ... is, if we follow the interpretation of the gentleman, then it is legally and constitutionally impossible to give a franchise to vote to overseas Filipinos who do not physically live in the country, which is quite ridiculous because that is exactly the whole point of this exercise – to enfranchise them and empower them to vote.[14] (Emphasis and words in bracket added; citations omitted)

Lest it be overlooked, no less than the COMELEC itself admits that the Citizenship Retention and Re Acquisition Act expanded the coverage of overseas absentee voting. According to the poll body:

> 1.05 With the passage of RA 9225 the scope of overseas absentee voting has been consequently expanded so as to include Filipinos who are also citizens of other countries, subject, however, to the strict prerequisites indicated in the pertinent provisions of RA 9225; [15]

Considering the unison intent of the Constitution and R.A. 9189 and the expansion of the scope of that law with the passage of R.A. 9225, the irresistible conclusion is that "duals" may now exercise the right of suffrage thru the absentee voting scheme and as overseas absentee voters. R.A. 9189 defines the terms adverted to in the following wise:

> "Absentee Voting" refers to the process by which qualified citizens of the Philippines abroad exercise their right to vote;
>
> "Overseas Absentee Voter" refers to a citizen of the Philippines who is qualified to register and vote under this Act, not otherwise disqualified by law, who is abroad on the day of elections;

While perhaps not determinative of the issue tendered herein, we note that the expanded thrust of R.A. 9189 extends also to what might be tag as the next generation of "duals". This may be deduced from the inclusion of the provision on derivative citizenship in R.A. 9225 which reads:

> SEC. 4. Derivative Citizenship. – The unmarried child, whether legitimate, illegitimate 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.

It is very likely that a considerable number of those unmarried children below eighteen (18) years of age had never set foot in the Philippines. Now then, if the next generation of "duals" may nonetheless avail themselves the right to enjoy full civil and political rights under Section 5 of the Act, then there is neither no rhyme nor reason why the petitioners and other present day "duals," provided they meet the requirements under Section 1, Article V of the Constitution in relation to R.A. 9189, be denied the right of suffrage as an overseas absentee voter. Congress could not have plausibly intended such absurd situation.

WHEREFORE, the instant petition is GRANTED. Accordingly, the Court rules and so holds that those who retain or re acquire Philippine citizenship under Republic Act No. 9225, the Citizenship Retention and Re Acquisition Act of 2003, may exercise the right to vote under the system of absentee voting in Republic Act No. 9189, the Overseas Absentee Voting Act of 2003.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario and Velasco, Jr., JJ., concur.

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[1] Also known as Overseas Absentee Voting Law or "OAVL" for short.

[2] Signed by Florentino A. Tuason Jr., as then COMELEC Committee Chairman on Overseas Absentee Voting ; Rollo, p. 33.

[3] G.R. No. 157013, July 10, 2003, 405 SCRA 614.

[4] Concluding paragraph of letter dated November 4, 2003 of the Comelec to the Balane Tamase Alampay Law Office (counsel for petitioners); Rollo, pp. 42-51.

[5] The other petitioners executed deeds of Special Power of Attorney (SPA), therein authorizing Loida Nicolas Lewis to file the Petition; Rollo, pp. 92-112.

[6] Rollo, pp. 53-67.

[7] Rollo, pp. 77-78.

[8] Published in the February 16, 2003 issues of Today and Daily Tribune.

[9] G.R. No. 88831, 8 November 1990, 191 SCRA 229.

[10] Macalintal v. COMELEC, supra.

[11] Id. at 645.

[12] Constitution, Article V, Section 1: ... ... at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election ....

[13] COMELEC's Memorandum, p. 6, appended to the Rollo.

[14] Macalintal v. COMELEC, supra, at pp. 641-644.

[15] COMELEC's Memorandum, p. 4, appended to the Rollo

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