GAUDENCIO M. CORDORA, PETITIONER, VS. COMMISSION ON ELECTIONS AND GUSTAVO S. TAMBUNTING, RESPONDENTS.

G.R. No. 176947. February 19, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for certiorari and mandamus, with prayer for the issuance of a temporary restraining order under Rule 65 of the 1997 Rules of Civil Procedure.

In EO Case No. 05-17, Gaudencio M. Cordora (Cordora) accused Gustavo S. Tambunting (Tambunting) of an election offense for violating Section 74 in relation to Section 262 of the Omnibus Election Code. The Commission on Elections' (COMELEC) En Banc dismissed Cordora's complaint in a Resolution[1] dated 18 August 2006. The present petition seeks to reverse the 18 August 2006 Resolution as well as the Resolution[2] dated 20 February 2007 of the COMELEC En Banc which denied Cordora's motion for reconsideration.

The Facts

In his complaint affidavit filed before the COMELEC Law Department, Cordora asserted that Tambunting made false assertions in the following items:

> That Annex A [Tambunting's Certificate of Candidacy for the 2001 elections] and Annex B [Tambunting's Certificate of Candidacy for the 2004 elections] state, among others, as follows, particularly Nos. 6, 9 and 12 thereof:
>
> - No. 6 - I am a Natural Born/Filipino Citizen
>
> - No. 9 - No. of years of Residence before May 14, 2001.
> 36 in the Philippines and 25 in the Constituency where I seek to be elected;
>
> - No. 12 - I am ELIGIBLE for the office I seek to be elected.[3] (Boldface and capitalization in the original)

Cordora stated that Tambunting was not eligible to run for local public office because Tambunting lacked the required citizenship and residency requirements.

To disprove Tambunting's claim of being a natural-born Filipino citizen, Cordora presented a certification from the Bureau of Immigration which stated that, in two instances, Tambunting claimed that he is an American: upon arrival in the Philippines on 16 December 2000 and upon departure from the Philippines on 17 June 2001. According to Cordora, these travel dates confirmed that Tambunting acquired American citizenship through naturalization in Honolulu, Hawaii on 2 December 2000. Cordora concluded:

> That Councilor Gustavo S. Tambunting contrary to the provision of Sec 74 (OEC): [sic] Re: CONTENTS OF CERTIFICATE OF CANDIDACY: which requires the declarant/affiant to state, among others, under oath,

> that he is a Filipino (No. 6), No. 9- residence requirement which he lost when [he was] naturalized as an American Citizen on December 2, 2000 at [sic] Honolulu, Hawaii, knowingly and willfully affirmed and reiterated that he possesses the above basic requirements under No. 12 - that he is indeed eligible for the office to which he seeks to be elected, when in truth and in fact, the contrary is indubitably established by his own statements before the Philippine Bureau of Immigration x x x.[4] (Emphases in the original)

Tambunting, on the other hand, maintained that he did not make any misrepresentation in his certificates of candidacy. To refute Cordora's claim that Tambunting is not a natural-born Filipino, Tambunting presented a copy of his birth certificate which showed that he was born of a Filipino mother and an American father. Tambunting further denied that he was naturalized as an American citizen. The certificate of citizenship conferred by the US government after Tambunting's father petitioned him through INS Form I-130 (Petition for Relative) merely confirmed Tambunting's citizenship which he acquired at birth. Tambunting's possession of an American passport did not mean that Tambunting is not a Filipino citizen. Tambunting also took an oath of allegiance on 18 November 2003 pursuant to Republic Act No. 9225 (R.A. No. 9225), or the Citizenship Retention and Reacquisition Act of 2003.

Tambunting further stated that he has resided in the Philippines since birth. Tambunting has imbibed the Filipino culture, has spoken the Filipino language, and has been educated in Filipino schools. Tambunting maintained that proof of his loyalty and devotion to the Philippines was shown by his service as councilor of Parañaque.

To refute Cordora's claim that the number of years of residency stated in Tambunting's certificates of candidacy is false because Tambunting lost his residency because of his naturalization as an American citizen, Tambunting contended that the residency requirement is not the same as citizenship.

The Ruling of the COMELEC Law Department

The COMELEC Law Department recommended the dismissal of Cordora's complaint against Tambunting because Cordora failed to substantiate his charges against Tambunting. Cordora's reliance on the certification of the Bureau of Immigration that Tambunting traveled on an American passport is not sufficient to prove that Tambunting is an American citizen.

The Ruling of the COMELEC En Banc

The COMELEC En Banc affirmed the findings and the resolution of the COMELEC Law Department. The COMELEC En Banc was convinced that Cordora failed to support his accusation against Tambunting by sufficient and convincing evidence.

The dispositive portion of the COMELEC En Banc's Resolution reads as follows:

> WHEREFORE, premises considered, the instant complaint is hereby DISMISSED for insufficiency of evidence to establish probable cause.
>
> SO ORDERED.[5]

Commissioner Rene V. Sarmiento (Commissioner Sarmiento) wrote a separate opinion which concurred with the findings of the En Banc Resolution. Commissioner Sarmiento pointed out that Tambunting could be considered a dual citizen. Moreover, Tambunting effectively renounced his American citizenship when he filed his certificates of candidacy in 2001 and 2004 and ran for public office.

Cordora filed a motion for reconsideration which raised the same grounds and the same arguments in his complaint. In its Resolution promulgated on 20 February 2007, the COMELEC En Banc dismissed Cordora's motion for reconsideration for lack of merit.

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The Issue

Cordora submits that the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it declared that there is no sufficient evidence to support probable cause that may warrant the prosecution of Tambunting for an election offense.

Cordora's petition is not an action to disqualify Tambunting because of Tambunting's failure to meet citizenship and residency requirements. Neither is the present petition an action to declare Tambunting a non-Filipino and a non-resident. The present petition seeks to prosecute Tambunting for knowingly making untruthful statements in his certificates of candidacy.

The Ruling of the Court

The petition has no merit. We affirm the ruling of the COMELEC En Banc.

Whether there is Probable Cause to Hold Tambunting for Trial
for Having Committed an Election Offense

There was no grave abuse of discretion in the COMELEC En Banc's ruling that there is no sufficient and convincing evidence to support a finding of probable cause to hold Tambunting for trial for violation of Section 74 in relation to Section 262 of the Omnibus Election Code.

Probable cause constitutes those facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed. Determining probable cause is an intellectual activity premised on the prior physical presentation or submission of documentary or testimonial proofs either confirming, negating or qualifying the allegations in the complaint.[6]

Section 74 of the Omnibus Election Code reads as follows:

> Contents of certificate of candidacy. -- The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; x x x the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.
>
> x x x
>
> The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-data and program of government not exceeding one hundred words, if he so desires.

Section 262 of the Omnibus Election Code, on the other hand, provides that violation of Section 74, among other sections in the Code, shall constitute an election offense.

Tambunting's Dual Citizenship

Tambunting does not deny that he is born of a Filipino mother and an American father. Neither does he deny that he underwent the process involved in INS Form I-130 (Petition for Relative) because of his father's citizenship. Tambunting claims that because of his parents' differing citizenships, he is both Filipino and American by birth. Cordora, on the other hand, insists that Tambunting is a naturalized American citizen.

We agree with Commissioner Sarmiento's observation that Tambunting possesses dual citizenship. Because of the circumstances of his birth, it was no longer necessary for Tambunting to undergo the naturalization process to acquire American citizenship. The process involved in INS Form I-130 only served to confirm the American citizenship which Tambunting acquired at birth. The certification from the Bureau of Immigration which Cordora presented contained two trips where Tambunting claimed that he is an American. However, the same certification showed nine other trips where Tambunting claimed that he is Filipino. Clearly, Tambunting possessed dual citizenship prior to the filing of his certificate of candidacy before the 2001 elections. The fact that Tambunting had dual citizenship did not disqualify him from running for public office.[7]

Requirements for dual citizens from birth

who desire to run for public office

We deem it necessary to reiterate our previous ruling in Mercado v. Manzano, wherein we ruled that dual citizenship is not a ground for disqualification from running for any elective local position.

> To begin with, dual citizenship is different from dual allegiance. The former arises when, as a result of the concurrent application of the different laws of two or more states, a person is simultaneously considered a national by the said states. For instance, such a situation may arise when a person whose parents are citizens of a state which adheres to the principle of jus sanguinis is born in a state which follows the doctrine of jus soli. Such a person, ipso facto and without any voluntary act on his part, is concurrently considered a citizen of both states. Considering the citizenship clause (Art. IV) of our Constitution, it is possible for the following classes of citizens of the Philippines to possess dual citizenship:
>
> (1) Those born of Filipino fathers and/or mothers in foreign countries which follow the principle of jus soli;
>
> (2) Those born in the Philippines of Filipino mothers and alien fathers if by the laws of their fathers' country such children are citizens of that country;
>
> (3) Those who marry aliens if by the laws of the latter's country the former are considered citizens, unless by their act or omission they are deemed to have renounced Philippine citizenship.
>
> There may be other situations in which a citizen of the Philippines may, without performing any act, be also a citizen of another state; but the above cases are clearly possible given the constitutional provisions on citizenship.
>
> Dual allegiance, on the other hand, refers to the situation in which a person simultaneously owes, by some positive act, loyalty to two or more states. While dual citizenship is involuntary, dual allegiance is the result of an individual's volition.
>
> x x x
>
> [I]n including §5 in Article IV on citizenship, the concern of the Constitutional Commission was not with dual citizens per se but with naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization. Hence, the phrase "dual citizenship" in R.A. No. 7160, §40(d) and in R.A. No. 7854, §20 must be understood as referring to "dual allegiance." Consequently, persons with mere dual citizenship do not fall under this disqualification. Unlike those with dual allegiance, who must, therefore, be subject to strict process with respect to the termination of their status, for candidates with dual citizenship, it should suffice if, upon the filing of their certificates of candidacy, they elect Philippine citizenship to terminate their status as persons with dual citizenship considering that their condition is the unavoidable consequence of conflicting laws of different states. As Joaquin G. Bernas, one of the most perceptive members of the Constitutional Commission, pointed out: "[D]ual citizenship is just a reality imposed on us because we have no control of the laws on citizenship of other countries. We recognize a child of a Filipino mother. But whether or not she is

considered a citizen of another country is something completely beyond our control."

By electing Philippine citizenship, such candidates at the same time forswear allegiance to the other country of which they are also citizens and thereby terminate their status as dual citizens. It may be that, from the point of view of the foreign state and of its laws, such an individual has not effectively renounced his foreign citizenship. That is of no moment as the following discussion on §40(d) between Senators Enrile and Pimentel clearly shows:

SENATOR ENRILE. Mr. President, I would like to ask clarification of line 41, page 17: "Any person with dual citizenship" is disqualified to run for any elective local position. Under the present Constitution, Mr. President, someone whose mother is a citizen of the Philippines but his father is a foreigner is a natural-born citizen of the Republic. There is no requirement that such a natural-born citizen, upon reaching the age of majority, must elect or give up Philippine citizenship.

On the assumption that this person would carry two passports, one belonging to the country of his or her father and one belonging to the Republic of the Philippines, may such a situation disqualify the person to run for a local government position?

SENATOR PIMENTEL. To my mind, Mr. President, it only means that at the moment when he would want to run for public office, he has to repudiate one of his citizenships.

SENATOR ENRILE. Suppose he carries only a Philippine passport but the country of origin or the country of the father claims that person, nevertheless, as a citizen,? No one can renounce. There are such countries in the world.

SENATOR PIMENTEL. Well, the very fact that he is running for public office would, in effect, be an election for him of his desire to be considered a Filipino citizen.

SENATOR ENRILE. But, precisely, Mr. President, the Constitution does not require an election. Under the Constitution, a person whose mother is a citizen of the Philippines is, at birth, a citizen without any overt act to claim the citizenship.

SENATOR PIMENTEL. Yes. What we are saying, Mr. President, is: Under the Gentleman's example, if he does not renounce his other citizenship, then he is opening himself to question. So, if he is really interested to run, the first thing he should do is to say in the Certificate of Candidacy that: "I am a Filipino citizen, and I have only one citizenship."

SENATOR ENRILE. But we are talking from the viewpoint of Philippine law, Mr. President. He will always have one citizenship, and that is the citizenship invested upon him or her in the Constitution of the Republic.

SENATOR PIMENTEL. That is true, Mr. President. But if he exercises acts that will prove that he also acknowledges other citizenships, then he will probably fall under this disqualification.[8] (Emphasis supplied)

We have to consider the present case in consonance with our rulings in Mercado v. Manzano,[9] Valles v. COMELEC,[10] and AASJS v. Datumanong.[11] Mercado and Valles involve similar operative facts as the present case. Manzano and Valles, like Tambunting, possessed dual citizenship by the circumstances of their birth. Manzano was born to Filipino parents in the United States which follows the doctrine of jus soli. Valles was born to an Australian mother and a Filipino father in Australia. Our rulings in Manzano and Valles stated that dual citizenship is different from dual allegiance both by cause and, for those desiring to run for public office, by effect. Dual citizenship is involuntary and arises when, as a result of the concurrent application of the different laws of two or more states, a person is simultaneously considered a national by the said states. Thus, like any other natural-born Filipino, it is enough for a person with dual citizenship who seeks public office to file his certificate of candidacy and swear to the oath of allegiance contained therein. Dual allegiance, on the other hand, is brought about by the individual's active participation in the naturalization process. AASJS states that, under

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R.A. No. 9225, a Filipino who becomes a naturalized citizen of another country is allowed to retain his Filipino citizenship by swearing to the supreme authority of the Republic of the Philippines. The act of taking an oath of allegiance is an implicit renunciation of a naturalized citizen's foreign citizenship.

R.A. No. 9225, or the Citizenship Retention and Reacquisition Act of 2003, was enacted years after the promulgation of Manzano and Valles. The oath found in Section 3 of R.A. No. 9225 reads as follows:

> 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 impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.

In Sections 2 and 3 of R.A. No. 9225, the framers were not concerned with dual citizenship per se, but with the status of naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization.[12] Section 5(3) of R.A. No. 9225 states that naturalized citizens who reacquire Filipino citizenship and desire to run for 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 filing 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" aside from the oath of allegiance prescribed in Section 3 of R.A. No. 9225. The twin requirements of swearing to an Oath of Allegiance and executing a Renunciation of Foreign Citizenship served as the bases for our recent rulings in Jacot v. Dal and COMELEC,[13] Velasco v. COMELEC,[14] and Japzon v. COMELEC,[15] all of which involve natural-born Filipinos who later became naturalized citizens of another country and thereafter ran for elective office in the Philippines. In the present case, Tambunting, a natural-born Filipino, did not subsequently become a naturalized citizen of another country. Hence, the twin requirements in R.A. No. 9225 do not apply to him.

Tambunting's residency

Cordora concluded that Tambunting failed to meet the residency requirement because of Tambunting's naturalization as an American. Cordora's reasoning fails because Tambunting is not a naturalized American. Moreover, residency, for the purpose of election laws, includes the twin elements of the fact of residing in a fixed place and the intention to return there permanently,[16] and is not dependent upon citizenship.

In view of the above, we hold that Cordora failed to establish that Tambunting indeed willfully made false entries in his certificates of candidacy. On the contrary, Tambunting sufficiently proved his innocence of the charge filed against him. Tambunting is eligible for the office which he sought to be elected and fulfilled the citizenship and residency requirements prescribed by law.

WHEREFORE, we DISMISS the petition. We AFFIRM the Resolutions of the Commission on Elections En Banc dated 18 August 2006 and 20 February 2007 in EO Case No. 05-17.

SO ORDERED.

ANTONIO T. CARPIO
Associate Justice

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WE CONCUR:

REYNATO S. PUNO
Chief Justice

LEONARDO A. QUISUMBING
Associate Justice

(On official leave)
CONSUELO YNARES-SANTIAGO
Associate Justice

MA. ALICIA AUSTRIA-MARTINEZ
Associate Justice

RENATO C. CORONA
Associate Justice

CONCHITA CARPIO MORALES
Associate Justice

(On official leave)
DANTE O. TINGA
Associate Justice

MINITA V. CHICO-NAZARIO
Associate Justice

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PRESBITERO J. VELASCO, JR.
Associate Justice

ANTONIO EDUARDO B. NACHURA
Associate Justice

ARTURO D. BRION
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

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[1] Rollo, pp. 36-41. Penned by Commissioner Florentino A. Tuason, Jr., with Chairman Benjamin S. Abalos, Sr., Commissioners Resurreccion Z. Borra, Romeo A. Brawner, Rene V. Sarmiento, and Nicodemo T. Ferrer concurring.

[2] Id. at 44-47. Penned by Commissioner Rene V. Sarmiento, with Chairman Benjamin S. Abalos, Sr., Commissioners Resurreccion Z. Borra, Florentino A. Tuason, Jr., Romeo A. Brawner, and Nicodemo T. Ferrer concurring.

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[3] Id. at 29.

[4] Id. at 30.

[5] Id. at 40.

[6] Kilosbayan, Inc. v. COMELEC, 345 Phil. 1141, 1173 (1997).

[7] See Valles v. Commission on Elections, 392 Phil. 327 (2000).

[8] 367 Phil. 132, 144-145, 147-149 (1999). Citations omitted.

[9] 367 Phil. 132 (1999).

[10] 392 Phil. 327 (2000).

[11] G.R. No. 160869, 11 May 2007, 523 SCRA 108.

[12] Id. at 117.

[13] G.R. No. 179848, 29 November 2008.

[14] G.R. No. 180051, 24 December 2008.

[15] G.R. No. 180088, 19 January 2009.

[16] See Romualdez-Marcos v. Commission on Elections, G.R. No. 119976, 18 September 1995, 248 SCRA 300.

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