

PRISCILA R. JUSTIMBASTE, PETITIONER, VS. COMMISSION ON ELECTIONS AND RUSTICO B. BALDERIAN, RESPONDENTS.

G.R. No. 179413. November 28, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On challenge via Certiorari and Prohibition is the Commission on Elections (COMELEC) en banc Resolution of August 21, 2007[1] affirming the May 28, 2007[2] Resolution of its Second Division dismissing the petition for disqualification filed by Priscila R. Justimbaste (petitioner) against Rustico B. Balderian (private respondent).

Gathered from the records of the case are the following antecedent facts:

On April 3, 2007, petitioner filed with the Office of the Leyte Provincial Election Supervisor a petition to disqualify private respondent as a candidate for mayor of Tabontabon, Leyte during the May 14, 2007 elections. In the main, petitioner alleged:

2.3. That the Respondent committed falsification and misinterpretation in his application for candidacy for mayor as follows;

- That while Respondent stated in the application [that] his name is Rustico Besa Balderian, his real name is CHU TECK SIAO as shown in the Certificate of Birth issued by the National Statistic Office, copy of which is hereto attached as "Annex B". (sic)

- That the Respondent had been using as his middle name BESA, while his brother Bienvenido is using the middle name SIAO, as shown by "Annexes C and D", a copy of which [is] hereto attached, thereby confusing the public as to his identity.

- That the Respondent is reportedly a U.S. citizen or Permanent resident of the United States and has not reportedly relinquished his allegiance or residence to that foreign country, thus disqualified from filing his application for Candidacy for mayor. (Emphasis and underscoring supplied)[3]

Private respondent denied petitioner's allegations, he asserting that he is a Filipino citizen.

In her Position Paper filed before the COMELEC, petitioner attached a record of private respondent's travels from 1998 to 2006, as certified by the Bureau of Immigration[4] a photocopy of private respondent's Philippine Passport[5] issued on November 6, 2002 by the Philippine Consulate in Los Angeles which shows his nationality as a Filipino; a Certification from the National Statistics Office dated April 4, 2007 for one Rustico S. Balderian[6] and another for one Rustico B. Balderian[7] a Certification from the Office of the Civil Registrar of Tabontabon dated March 30, 2007 as to the fact of birth of one Chu Teck Siao to Peter Siao and Zosima Balderian[8] and a Certification from the Office of the Clerk of Court of the Regional Trial Court, Tacloban City that the records of the Petition for Change of Name of private respondent "is (sic) not available in the records of this office." [9]

In the meantime, private respondent won and was proclaimed as mayor of Tabontabon.

By Resolution of May 28, 2007, the Second Division of the COMELEC denied the petition for disqualification, disposing as follows:

WHEREFORE, premises considered the instant petition for disqualification is denied and the respondent Rustico B. Balderian is considered a Filipino, having elected to be and is thus qualified to run as Mayor of the Municipality of Tabontabon, Leyte. (Emphasis and underscoring supplied)

As reflected early on, petitioner's Motion for Reconsideration of the COMELEC Second Division Resolution was denied by the banc, hence, the present petition.

The issue in the main is whether private respondent committed material misrepresentation and falsification in his certificate of candidacy.

Section 74 of the Omnibus Election Code (OEC) provides that the contents of the certificate of candidacy must be true to the best of the candidate's knowledge, thus:

SEC. 74. 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; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; 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 assumed 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. (Emphasis and underscoring supplied)

If the certificate contains a material representation which is false, Section 78 provides the procedure to challenge the same, thus:

SEC. 78. Petition to deny due course to or cancel a certificate of candidacy. - A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing not later than fifteen days before the election. (Emphasis and underscoring supplied)

Material misrepresentation as a ground to deny due course or cancel a certificate of candidacy refers to the falsity of a statement required to be entered therein, as enumerated in above-quoted Section 74 of the Omnibus Election Code. Concurrent with materiality is a deliberate intention to deceive the electorate as to one's qualifications. Thus *Salcedo II v. Commission on Elections*[10] reiterates:

As stated in law, in order to justify the cancellation of the certificate of candidacy under Section 78, it is essential that the false representation mentioned therein pertained to a material matter for the sanction imposed by this provision would affect the substantive rights of a candidate - the right to run for the elective post for which he filed the certificate of candidacy.[11]

x x x x

Therefore, it may be concluded that the material misrepresentation contemplated by Section 78 of the Code refers to the qualifications for elective office. This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation in his certificate of candidacy are grave

- to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of election laws. It could not have been the intention of the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake.[12]

x x x x

Aside from the requirement of materiality, a false representation under Section 78 must consist of a "deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible." In other words, it must be made with an intention to deceive the electorate as to one's qualifications for public office. x x x[13] (Emphasis and underscoring supplied)

The pertinent provision of Republic Act No. 7160 or the Local Government Code (LGC) governing qualifications for elective municipal officials[14] reads:

SEC. 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 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 local language or dialect.

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

x x x x (Emphasis in the original; underscoring supplied)

Petitioner asserts that private respondent committed material misrepresentation when he stated in his certificate of candidacy that he is a Filipino citizen and that his name is Rustico Besa Balderian, instead of Chu Teck Siao. Further, petitioner asserts that the immigration records of private respondent who frequently went to the United States from 1998 up to 2006 reflected the acronyms "BB" and "RP" which petitioner takes to STAND FOR "Balikbayan" and "Re-entry Permit," thus showing that private respondent either harbors dual citizenship or is a permanent resident of a foreign country in contravention of Section 40 of the LGC:

Sec. 40. Disqualifications. - The following persons are disqualified from running for any elective local position:

(a)

Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;

(b)

Those removed from office as a result of an administrative case;

(c)

Those convicted of final judgment for violating the oath of allegiance to the Republic;

(d)

Those with dual citizenship;

(e)

Fugitives from justice in criminal or non-political cases here or abroad;

(f)

Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and

(g)

The insane or feeble-minded. (Emphasis in the original and supplied)

Upon the other hand, private respondent insists on his Filipino citizenship.

Republic Act 6768[15] provides that a balikbayan is

- A Filipino citizen who has been continuously out of the Philippines for a period of at least one year;
- A Filipino overseas worker; or
- A former Filipino citizen and his or her family, who had been naturalized in a foreign country and comes or returns to the Philippines.

Re-entry permits are, under the Philippine Immigration Act, issued to lawful resident aliens who depart temporarily from the Philippines.[16]

The record of the case yields no concrete proof to show that private respondent, who holds a Philippine passport, falls under the third category of a balikbayan (former Filipino citizen).

As noted by public respondent:

[T]he Commission (Second Division) dismissed the instant petition since the same was based on mere conjectures and surmises. Petitioner never presented clear and convincing evidence that respondent is indeed an American citizen and a permanent resident of the United States of America. (Emphasis and underscoring supplied)

As in petitioner's petition before the COMELEC, as alleged above, she, in her present Petition, is uncertain of private respondent's citizenship or resident status, viz:

- c. That the Respondent is reportedly a US citizen or Permanent resident of the United States and has not reportedly relinquished his allegiance or residence to that foreign country, thus disqualified from filing his application for Candidacy for mayor. (Emphasis, italics, and underscoring supplied)[17]

Private respondent's notarized photocopy of his Philippine Passport[18] issued in 2002, the genuineness and authenticity of which is not disputed by petitioner, shows that he is a Filipino.

Petitioner insists, however, that private respondent is a Chinese national, following the nationality of his father, Peter Siao. There are, however, conflicting documentary records bearing on the citizenship of private respondent's father. Thus, in the Certificate of Live Birth of private respondent on file at the Local Civil Registrar of Tabontabon,[19] the father is registered as a Filipino. But in the Certificate of Live Birth of private respondent's older brother Bienvenido Balderian,[20] the father is registered as a Chinese.

In private respondent's Certificate of Live Birth, the entry on the date, as well as the place of marriage of private respondents' parents, reads "no data available." In his brother's Certificate of Live Birth, the entry on the same desired information is left blank. In light of these, absent any proof that private respondent's parents Peter Siao and Zosima Balderian[21] contracted marriage, private respondent is presumed to be illegitimate, hence, he follows the citizenship of his mother who is a Filipino.[22] As will be reflected shortly, private respondent was, in a certified true copy of a decision dated August 26, 1976 rendered by then Juvenile and Domestic Relations Court

(JDRC) of Leyte and Southern Leyte, therein noted, as gathered by the said court from the evidence presented, to be an illegitimate child.

Petitioner goes on to bring attention to private respondent's filing of a petition for change of name from Chu Teck Siao to Rustico B. Balderian, which petition, petitioner alleges, is not reflected in the records of the National Statistics Office as shown by two Certifications from the said agency.

Responding, private respondent confirms that he indeed filed a verified petition for change of name in 1976, docketed as SP Proc. JP-0121, with the then JDRC of Leyte and Southern Leyte which rendered a decision in his favor in the same year. He adds that his previous counsel, Atty. Rufino Reyes, sought in 1986 to secure a certified true copy of the decision but no court records thereof could be found, hence, Branch 7 of the Regional Trial Court (RTC) of Palo, Leyte, "reconstituted the records" from the file copies of his counsel by Order of November 7, 1986.[23]

The Court notes that by Order of November 21, 1986, Branch 7 of the Palo RTC, after conducting a hearing, directed the issuance of a certified true copy of the judgment[24] rendered by the JDRC on August 26, 1976. The Order states:

"When this case came on [sic] hearing this morning, Assistant Provincial Fiscal Teresita S. Lopez of Leyte who was then Clerk of Court of the JDRC of Leyte confirmed the genuineness of the file copy of the aforesaid judgment of Judge Zoila M. Redoña of the JDRC of Leyte in SP Proc. JP-0121.

WHEREFORE, it is ordered that the clerk of this court issue a certified true copy of the aforesaid judgment in SP Proc. JP-0121 dated August 26, 1986 (sic) the dispositive parts of which reads -

"Premises considered, the court hereby allows the petitioner (sic) for Change of Name. The petitioner henceforth shall carry the name of Rustico Balderian as prayed for."

Let a copy of this decision be furnished the Civil Registrar of McArthur, Leyte, for him to make of record this judgment in his Civil Registry." (Emphasis and underscoring supplied)[25]

In the certified true copy of the judgment of the JDRC, the following were noted:

At the hearing petitioner presented the following exhibits: "B" - the order of the court setting the case for hearing and ordering its publication; ordering also that a copy be served upon the Office of the Sol. Gen. which was acknowledged having been received by said office on Nov. 11, 1975 as per return Registry Receipt of the court attached to page 7 of the record; "C" - the Affidavit of Publication of the Asst. Publisher of the "The Reporter" the newspaper of general circulation which the order was published, "D" - the issue of "The Reporter" dated November 12, 1975 and "D-1" - the page carried the order; "E" - issue of same newspaper dated November 19, 1975 and "E-1" - the column carrying the order; "F" - the issue of said newspaper dated November 26, 1975, and the "F-1", the column carrying the order; "G" - the certification of the Local Civil Registrar; G-1, the place of birth of petitioner; G-2, his date of birth; G-3, the name of petitioner's father Peter Siao; G-4, and his mother's name Zosima Balderian and G-5, the entry that petitioner is an illegitimate child; which certification was issued on May 5, 1975 by said public official; "H" - petitioner's Baptismal Certificate; "H-1" - his date of birth; "H-2" - his place of birth; "H-3" - that his parents are Peter Siao and Zosima Balderian. Exhibit "I" -petitioner's diploma from the Manila Central University where he earned his degree of Optometry on April 6, 1975 and the name of Rustico Balderian; "J" - petitioner's official rating issued by the Commissioner of Professional Regulation Commission under the Board of Optometry issued January 13, 1976 under the name of Rustico B. Balderian; "K" - petitioner's registration License No. 3374 with the Professional Regulation Commission for the practice of Optometry; "L" - petitioner's Registration Card with the Manila Central University being enrolled in Pre-Medicine Course as of June 1976; Exhibit "M" - his registration card in the University of the East when he cross-enrolled in the College of Law for the second year 1976-1977; Exhibit "N" - Student Pilot's License No. 758109 issued by the CAA to fly fixed wings; Exhibit "O" - his

Student Pilot's License No. 75SH224 issued by Civil Aeronautics Administration allowing him to fly a helicopter.

To the above school records which he earned under the name of Rustico Balderian, the name under which he was baptized and hereon known to all since he can remember, he never used the alien name of Chua Teck Siao by which he was registered. He has not been charged with any offense either criminally, civilly or administratively.

His intention in filing the petition is to avoid undergoing the same difficulty and ordeal when he takes the BAR examination and the Board examination in Medicine as he did when he took the Board Examination in Optometry. After the latter Board allowed him to take the examination upon the submission of an affidavit of two disinterested persons attesting to the fact that Chu Teck Siao and Rustico Balderian is one and the same person, he was advised to petition for Change of Name to avoid confusion.[26] (Emphasis and underscoring supplied)

That the records of the Tabontabon Civil Registry still show, by petitioner's allegation, that private respondent's name is Chu Teck Siao does not necessarily mean that there was no such petition for change of name and that the certified true copy of judgment thereon is spurious, especially given that, as highlighted in the above-quoted dispositive portion of the JDRC decision, it was the Civil Registrar of McArthur, not Tabontabon, which was ordered to be copy-furnished the decision and "to make of record [its] judgment in his Civil Registry."

AT ALL EVENTS, the use of a name other than that stated in the certificate of birth is not a material misrepresentation,[27] as "material misrepresentation" under the earlier-quoted Section 78 of the Omnibus Election Code refers to "qualifications for elective office." It need not be emphasized that there is no showing that there was an intent to deceive the electorate as to private respondent's identity, nor that by using his Filipino name the voting public was thereby deceived.

Petitioner's compilation of online articles/data on private respondent puts on view his profile as Rustico B. Balderian. Petitioner in fact has not claimed that the electorate did not know who they were voting for when they cast their ballots in favor of private respondent or that they were deceived into voting for someone else other than him. Given that private respondent and his family are members of the Colegio de Sta. Lourdes of Leyte Foundation, Inc. which operates a nursing school in Tabontabon, it may safely be assumed that the electorate had been fully acquainted with him.

Petitioner finally assails the failure of public respondent to conduct hearings on her petition, citing Dayo v. Commission on Elections[28] which held that "an election protest may not be disposed of by summary judgment." [29]

Section 5 vis-à-vis Section 7 of Republic Act 6646[30] provides that the procedure in cases involving nuisance candidates shall apply to petitions for cancellation of certificate of candidacy.

SECTION 5. Procedure in Cases of Nuisance Candidates. â”€

(a) A Verified petition to declare a duly registered candidate as a nuisance candidate under Section 69 of Batas Pambansa Blg. 881 shall be filed personally or through duly authorized representative with the Commission by any registered candidate for the same office within five (5) days from the last day for the filing of certificates of candidacy. Filing by mail not be allowed.

(b) Within three (3) days from the filing of the petition, the Commission shall issue summons to the respondent candidate together with a copy of the petition and its enclosures, if any.

(c) The respondent shall be given three (3) days from receipt of the summons within which to file his verified

answer (not a motion to dismiss) to the petition, serving copy thereof upon the petitioner. Grounds for a motion to dismiss may be raised as affirmative defenses.

(d) The Commission may designate any of its officials who are lawyers to hear the case and receive evidence. The proceeding shall be summary in nature. In lieu of oral testimonies, the parties may be required to submit position papers together with affidavits or counter-affidavits and other documentary evidence. The hearing officer shall immediately submit to the Commission his findings, reports, and recommendations within five (5) days from the completion of such submission of evidence. The Commission shall render its decision within five (5) days from receipt thereof.

(e) The decision, order, or ruling of the Commission shall, after five (5) days from receipt of a copy thereof by the parties, be final and executory unless stayed by the Supreme Court.

(f) The Commission shall within twenty-four hours, through the fastest available means, disseminate its decision or the decision of the Supreme Court to the city or municipal election registrars, boards of election inspectors and the general public in the political subdivision concerned. (Underscoring supplied)

SECTION 7. Petition to Deny Due Course To or Cancel a Certificate of Candidacy. — The procedure hereinabove provided shall apply to petitions to deny due course to or cancel a certificate of candidacy as provided in Section 78 of Batas Pambansa Blg. 881. (Emphasis in the original, underscoring supplied)

Petitioner is reminded that a petition for disqualification based on material misrepresentation in the certificate of candidacy is different from an election protest. The purpose of an election protest is to ascertain whether the candidate proclaimed elected by the board of canvassers is really the lawful choice of the electorate.[31]

In fine, petitioner has not shown that public respondent, in issuing the assailed Resolution, committed grave abuse of discretion amounting to lack or excess of jurisdiction.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-De Castro, and Brion, JJ., concur.
Ynares-Santiago, J., on leave.

[1] Rollo, pp. 115-117.

[2] Id. at 105-109.

[3] Id. at 5-6.

[4] Id. at 48-52.

[5] Id. at 53.

[6] Id. at 74.

[7] Id. at 75.

[8] Id. at 76.

[9] Id. at 77.

[10] 371 Phil. 377 (1999)..

[11] Id. at 386.

[12] Id. at 389.

[13] Id. at 390

[14] Vide OMNIBUS ELECTION CODE, Sec. 65. Qualifications of elective local officials. - The qualifications for elective provincial, city, municipal and baranggay officials shall be those provided for in the Local Government Code.

[15] Entitled AN ACT INSTITUTING A BALIKBAYAN PROGRAM.

[16] Sec 22. Any lawful resident alien about to depart temporarily from the Philippines who desires a re-entry permit may apply to the Commissioner of Immigration for such permit. If the Commissioner finds that the applicant has been lawfully admitted into the Philippines for permanent residence, he shall issue the permit which shall be valid for a period not exceeding one year except that upon application for extension and good cause therefore being shown by the applicant, it may be extended by the Commissioner for additional periods not exceeding one year each. The Commissioner shall prescribe the form of permit. Applications for the issuance or extension of permits shall be made under oath and in such form and manner, as the Commissioner shall by regulations prescribe.

The permit, upon approval of the Commissioner of Immigration, may be made good for several trips within the period of one year: Provided, however, That the holder thereof shall be required to pay the fee required under section forty-two (a)(3) of the Act for every trip he makes. [Paragraph added pursuant to Republic Act No. 503, Sec. 8]

[17] Petition before this Court, rollo, p. 6.

[18] Id. at 143.

[19] Id. at 76.

[20] Id. at 101.

[21] Id. at 85 - The verified petition for change of name filed by private respondent states that no marriage was contracted between his parents. The birth certificate of private respondent's brother bears no date of marriage of the parents.

[22] 464 Phil.151 (2004).

[23] Rollo, p. 78.

[24] Id. at 79-84.

[25] Id. at 91.

[26] Id. at 79-81.

[27] Supra at Salcedo II v. Commission on Elections.

[28] G.R. No. 94681, July 18, 1991, 199 SCRA 449.

[29] Id. at 452.

[30] AN ACT INTRODUCING ADDITIONAL REFORMS IN THE ELECTORAL SYSTEM AND FOR OTHER PURPOSES.

[31] 387 Phil. 491, 511.

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