ABRAHAM KAHLIL B. MITRA, PETITIONER, VS. COMMISSION ON ELECTIONS, ANTONIO V. GONZALES AND ORLANDO R. BALBON, JR., RESPONDENTS.

G.R. No. 191938. October 19, 2010

Ponente: BRION, J.

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BRION, J.:

We resolve the Motion for Reconsideration[1] filed by public respondent Commission on Elections (COMELEC) and the Motion for Reconsideration with Motion for Oral Arguments[2] filed by private respondents Antonio V. Gonzales and Orlando R. Balbon, Jr. (private respondents), dated July 19, 2010 and July 20, 2010, respectively, addressing our Decision of July 2, 2010[3] (July 2, 2010 Decision or Decision). We annulled in this Decision the February 10, 2010 and May 4, 2010 Resolutions of the COMELEC, and denied the private respondents' petition to cancel the Certificate of Candidacy (COC) of petitioner Abraham Kahlil B. Mitra (Mitra).

The Assailed Ruling

To recall its highlights, our Decision emphasized that despite our limited certiorari jurisdiction in election cases, we are not only obliged but are constitutionally bound to intervene when the COMELEC's action on the appreciation and evaluation of evidence oversteps the limits of its discretion - in this case, a situation where resulting errors, arising from the grave abuse committed by the COMELEC, mutated from being errors of judgment to errors of jurisdiction. Based on our evaluation of the evidence presented by both parties, we found that Mitra did not commit any deliberate material misrepresentation in his COC. We noted, too, that the COMELEC gravely abused its discretion in its appreciation of the evidence, leading it to conclude that Mitra is not a resident of Aborlan, Palawan. We also found that the COMELEC failed to critically consider whether Mitra deliberately attempted to mislead, misinform or hide a fact that would otherwise render him ineligible for the position of Governor of Palawan.

On the critical question of whether Mitra deliberately misrepresented his Aborlan residence to deceive and mislead the people of the Province of Palawan, we found that Mitra did not. In fact, Mitra adduced positive evidence of transfer of residence which the private respondents' evidence failed to sufficiently controvert. Specifically, the private respondents' evidence failed to show that Mitra remained a Puerto Princesa City resident.

In this regard, we took note of the "incremental moves" Mitra undertook to establish his new domicile in Aborlan, as evidenced by the following: (1) his expressed intent to transfer to a residence outside of Puerto Princesa City to make him eligible for a provincial position; (2) his preparatory moves starting in early 2008; (3) the transfer of registration as a voter in March 2009; (4) his initial transfer through a leased dwelling at Maligaya Feedmill; (5) the purchase of a lot for his permanent home; and (6) the construction of a house on the said lot which is adjacent to the premises he was leasing pending the completion of his house. Thus, we found that under the situation prevailing when Mitra filed his COC, there is no reason to infer that Mitra committed any misrepresentation, whether inadvertently or deliberately, in claiming residence in Aborlan. We also emphasized that the COMELEC

could not even present any legally acceptable basis (as it used subjective non-legal standards in its analysis) to conclude that Mitra's statement in his COC concerning his residence was indeed a misrepresentation. In sum, we concluded that the evidence in the present case, carefully reviewed, showed that Mitra indeed transfered his residence from Puerto Princesa City to Aborlan within the period required by law.

The Motions for Reconsideration

In its Motion for Reconsideration dated July 19, 2010, the COMELEC, through the Office of the Solicitor General, asks us to reconsider our July 2, 2010 Decision on the sole ground that:

> THIS HONORABLE COURT ERRED WHEN IT REVIEWED THE PROBATIVE VALUE OF THE EVIDENCE PRESENTED AND SUBSTITUTED ITS OWN FACTUAL FINDINGS OVER THAT OF [THE] PUBLIC RESPONDENT.[4]

The COMELEC argues that we overstepped our review power over its factual findings; as a specialized constitutional body, the findings and conclusions of the COMELEC are generally respected and even given the status of finality. The COMELEC also contends that the Court erred in taking cognizance of the present petition since the issues raised therein are essentially factual in nature. It claims that it is elementary that the extraordinary remedy of certiorari is limited to correcting questions of law and that the factual issues raised in the present petition are not appropriate for a petition for review on certiorari.

On the merits, the COMELEC submits that there is substantial, if not overwhelming, evidence that Mitra is not a resident of Aborlan, Palawan. It argues that it merely took cognizance of Mitra's purported dwelling's "habitableness," or lack thereof, to determine the fact of residency; while Mitra may have exhibited his intention to transfer his domicile, the fact of actual residency was lacking.

For their part, the private respondents raise the following errors in support of their Motion for Reconsideration with Motion for Oral Arguments dated July 20, 2010, viz:

> I.
>
> THE MAJORITY ERRED IN EXERCISING THIS HONORABLE COURT'S LIMITED CERTIORARI JURISDICTION EVEN WHEN THE PETITION, ON ITS FACE, FAILED TO SHOW HOW THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION.
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> II.
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> THE MAJORITY ERRED IN CONCLUDING THAT THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION BY USING SUBJECTIVE AND NON-LEGAL STANDARDS IN ASSESSING THE EVIDENCE SUBMITTED BY MITRA.
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> III.
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> GRANTING WITHOUT ADMITTING THAT THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION IN ONE ASPECT OF ITS RESOLUTION, THE SUPREME COURT SHOULD NONETHELESS CONSIDER WHETHER THE OTHER EVIDENCE SUBMITTED ARE ENOUGH TO SUSTAIN THE RULING OF THE COMELEC.
> A.
>
> THE QUANTUM OF EVIDENCE NECESSARY TO OVERTURN THE FINDINGS OF FACTS OF THE COMELEC SHOULD BE CLEAR AND CONVINCING EVIDENCE. WHEN THE EVIDENCE OF [THE] PETITIONER ARE UNSUBSTANTIATED AND CONTROVERTED, THE SAME FAILS TO REACH THE QUANTUM OF PROOF NECESSARY TO SUBSTITUTE THE FINDINGS OF THE COMELEC.

IV.

THE MAJORITY ERRED IN FOCUSING ON THE COMELEC'S OPINION REGARDING THE PHOTOGRAPHS SUBMITTED BY MITRA OF HIS SUPPOSED RESIDENCE, WHILE TOTALLY DISREGARDING OTHER EVIDENCE SUBMITTED BY THE PRIVATE RESPONDENTS AND CONSIDERED BY THE COMELEC.

A.

THE MAJORITY ERRED IN DISREGARDING THE EFFECTIVITY OF THE CONTRACT OF LEASE WHICH SHOWS THAT THE SAME IS ONLY UP TO 28 FEBRUARY 2010.

B.

THE MAJORITY ERRED IN DISREGARDING EVIDENCE WHICH SHOW THAT MITRA FAILED TO ABANDON HIS DOMICILE OF ORIGIN.

V.

THE MAJORITY ERRED IN HOLDING THAT MITRA HAD TRANSFERRED HIS RESIDENCE FROM HIS DOMICILE OF ORIGIN IN PUERTO PRINCESA CITY TO HIS DOMICILE OF CHOICE IN ABORLAN, IN AN INCREMENTAL PROCESS.

VI.

THE MAJORITY ERRED IN HOLDING THAT MITRA DID NOT COMMIT ANY DELIBERATE MATERIAL MISREPRESENTATION IN HIS COC.

A.

THE MATERIAL STATEMENT IN PETITIONER'S COC RESPECTING HIS RESIDENCE HAS BEEN SHOWN TO BE FALSE. BY MAKING SUCH FALSE STATEMENT, PETITIONER DELIBERATELY TRIED TO MISLEAD AND TO MISINFORM THE ELECTORATE AS TO HIS ACTUAL RESIDENCE. HENCE, HIS COC WAS CORRECTLY DENIED DUE COURSE AND CANCELLED.

B.

THE MAJORITY ERRED IN EXONERATING MITRA FROM THE VIOLATION OF A MANDATORY PROVISION OF LAW WHICH ENTAILS BOTH ADMINISTRATIVE AND CRIMINAL LIABILITIES BY INVOKING THE PURPOSE OF THE LAW WHERE SUCH RESORT IS NOT CALLED FOR IN VIEW OF THE GIVEN FACTS AND EVIDENCE PRESENTED IN THIS CASE.

VII.
JURISPRUDENCE RELIED ON BY THE MAJORITY IS NOT APPLICABLE TO THE PRESENT CASE.

A.

THE CASE OF TORAYNO V. COMELEC IS NOT APPLICABLE TO THE PRESENT CASE.

B.

THE CASE OF ASISTIO V. TRINIDAD PE-AGUIRRE IS LIKEWISE NOT APPLICABLE TO THE PRESENT CASE.

C.

THE CASE OF VELASCO SHOULD BE APPLIED STRICTLY TO THE PRESENT CASE.[5]

Our Ruling

We resolve to deny, for lack of merit, the motions for reconsideration and for oral arguments.

We note at the outset that the COMELEC and private respondents' arguments are mere rehashes of their previous submissions; they are the same arguments addressing the issues we already considered and passed upon in our July 2, 2010 Decision. Thus, both the COMELEC and private respondents failed to raise any new and substantial argument meriting reconsideration. The denial of the motion for oral arguments proceeds from this same reasoning; mere reiterations of the parties' original submissions on issues our Decision has sufficiently covered, without more, do not merit the time, effort and attention that an oral argument shall require.

Having said these, we shall still proceed to discuss the aspects of the case the motions touched upon, if only to put an end to lingering doubts on the correctness of our July 2, 2010 Decision.

First, both the COMELEC and the private respondents posit that the Court improperly exercised its limited certiorari jurisdiction; they theorize that Mitra's petition failed to allege and show errors of jurisdiction or grave abuse of discretion on the part of the COMELEC. They also stress that the Court should respect and consider the COMELEC's findings of fact to be final and non-reviewable.

The COMELEC's submission in this regard - that the extraordinary remedy of certiorari is limited to corrections of questions of law and that the factual issues raised in the present petition are not appropriate for a petition for review on certiorari - is wholly erroneous. This submission appears to have confused the standards of the Court's power of review under Rule 65 and Rule 45 of the Rules of Court, leading the COMELEC to grossly misread the import of Mitra's petition before the Court.

To recall, Mitra brought his case before us via a petition for certiorari, pursuant to Section 2, Rule 64, in relation to Rule 65, of the Rules of Court. Thus, in our July 2, 2010 Decision, we emphasized that our review (under the Rule 65 standard of grave abuse of discretion, and not under the Rule 45 question of law standard) is based on a very limited ground, i.e., on the jurisdictional issue of whether the COMELEC acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

The basis for the Court's review of COMELEC rulings under the standards of Rule 65 of the Rules of Court is Section 7, Article IX-A of the Constitution which provides that "[U]nless otherwise provided by [the] Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof." For this reason, the Rules of Court provide for a separate rule (Rule 64) specifically applicable only to decisions of the COMELEC and the Commission on Audit. This Rule expressly refers to the application of Rule 65 in the filing of a petition for certiorari, subject to the exception clause - "except as hereinafter provided."[6]

In Aratuc v. Commission on Elections[7] and Dario v. Mison,[8] the Court construed the above-cited constitutional provision as relating to the special civil action for certiorari under Rule 65 (although with a different reglementary period for filing) and not to an appeal by certiorari under Rule 45 of the Rules of Court. Thus, Section 2 of Rule 64 of the Rules of Court now clearly specifies that the mode of review is the special civil action of certiorari under Rule 65, except as therein provided. In Ocate v. Commission on Elections,[9] we further held that:

> The purpose of a petition for certiorari is to determine whether the challenged tribunal has acted without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. Thus,

> any resort to a petition for certiorari under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure is limited to the resolution of jurisdictional issues.

The COMELEC should likewise be aware that the Constitution itself,[10] in defining judicial power, pointedly states that -

> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

This provision, more than anything else, identifies the power and duty of this Court in grave abuse of discretion situations, and differentiates this authority from the power of review by appeal that Rule 45 of the Rules of Court defines.

Based on these considerations, we cannot accept the COMELEC's position that patently confuses the mode of review in election cases under Rules 64 and 65 of the Rules of Court, with the appellate review that Rule 45 of the same Rules provides.

We likewise reject the COMELEC and the private respondents' proposition that the Court erred in exercising its limited certiorari jurisdiction. Although the COMELEC is admittedly the final arbiter of all factual issues as the Constitution[11] and the Rules of Court[12] provide, we stress that in the presence of grave abuse of discretion, our constitutional duty is to intervene and not to shy away from intervention simply because a specialized agency has been given the authority to resolve the factual issues.

As we emphasized in our Decision, we have in the past recognized exceptions to the general rule that the Court ordinarily does not review in a certiorari case the COMELEC's appreciation and evaluation of evidence. One such exception is when the COMELEC's appreciation and evaluation of evidence go beyond the limits of its discretion to the point of being grossly unreasonable. In this situation, we are duty bound under the Constitution to intervene and correct COMELEC errors that, because of the attendant grave abuse of discretion, have mutated into errors of jurisdiction.

Our Decision clearly pointed out Mitra's submissions and arguments on grave abuse of discretion, namely, that the COMELEC failed to appreciate that the case is a cancellation of a COC proceeding and that the critical issue is the presence of deliberate false material representation to deceive the electorate. In fact, Mitra's petition plainly argued that the COMELEC's grave abuse of discretion was patent when it failed to consider that the ground to deny a COC is deliberate false representation. We completely addressed this issue and, in the process, analyzed the reasoning in the assailed COMELEC decision. At every step, we found that the COMELEC committed grave abuse of discretion in the appreciation of the evidence.

Second, the private respondents contend that the COMELEC did not use subjective non-legal standards (i.e., interior decoration of the room) in arriving at its decision; it merely stated how it perceived Mitra's alleged residence. The private respondents additionally claim that the quantum of evidence necessary to overturn the findings of the COMELEC should be clear and convincing evidence, which level of evidence does not obtain in the present case.

The assailed COMELEC ruling speaks for itself on the matter of the standards the COMELEC used. We found that the COMELEC plainly used a subjective non-legal standard in its analysis and thereby, the COMELEC used wrong considerations in arriving at the conclusion that Mitra's residence at the Maligaya Feedmill is not the residence contemplated by law.

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We reiterate that the COMELEC based its ruling that Mitra did not take up residence in Aborlan largely on the photographs of Mitra's Aborlan premises; it concluded that the photographed premises could not have been a residence because of its assessment of the interior design and furnishings of the room. Thus, the COMELEC Second Division's Resolution (which the COMELEC en banc fully supported) did not merely conclude that Mitra does not live in the photographed premises; more than this, it ruled that these premises cannot be considered a home or a residence, for lack of the qualities of a home that the Second Division wanted to see. To quote:

> The pictures presented by Mitra of his supposed "residence" are telling. The said pictures show a small, sparsely furnished room which is evidently unlived in and which is located on the second floor of a structure that appears like a factory or a warehouse. These pictures likewise show that the "residence" appears hastily set-up, cold, and utterly devoid of any [personality] which would have imprinted Mitra's personality thereto such as old family photographs and memorabilia collected through the years. In fact, an appreciation of Mitra's supposed "residence" raises doubts whether or not he indeed lives there. Verily, what is lacking therein are the loving attention and details inherent in every home to make it one's residence. Perhaps, at most, and to this Commission's mind, this small room could have served as Mitra's resting area whenever he visited the said locality but nothing more.
>
> This observation coupled with the numerous statements from former employees and customers of Maligaya Feed Mill and Farm that Mitra's residence is located in an unsavory location, considering the noise and pollution of being in a factory area, and that the same, in fact, had been Maligaya Feed Mill's office just a few months back, militates against Mitra's claim that the same has been his residence since early 2008. These information make it clear to this Commission that this room is not a home.[13]

Thus presented, the COMELEC's requirement of what should be considered a "residence" cannot but be a highly subjective one that finds no basis in law, in jurisprudence, or even in fact.

Third, we cannot likewise agree with the private respondents' theory that the quantum of evidence necessary to overturn the factual findings of the COMELEC should be clear and convincing evidence, as it misappreciates that we nullified the COMELEC's findings because it used the wrong considerations in arriving at its conclusions.

The private respondents fail to realize that the important considerations in the present case relate to questions bearing on the cancellation of the COC that they prayed for; the main critical points are the alleged deliberate misrepresentation by Mitra and the underlying question of his residency in Aborlan, Palawan.

While it is undisputed that Mitra's domicile of origin is Puerto Princesa City, Mitra adequately proved by substantial evidence that he transferred by incremental process to Aborlan beginning 2008, and concluded his transfer in early 2009. As our Decision discussed and as repeated elsewhere in this Resolution, the private respondents failed to establish by sufficiently convincing evidence that Mitra did not effectively transfer, while the COMELEC not only grossly misread the evidence but even used the wrong considerations in appreciating the submitted evidence.

To convince us of their point of view, the private respondents point out that we (1) totally disregarded the other evidence they submitted, which the COMELEC, on the other hand, properly considered; (2) disregarded the import of the effectivity of the lease contract, which showed that it was only effective until February 28, 2010; and (3) disregarded the evidence showing that Mitra failed to abandon his domicile of origin.

These issues are not new issues; we extensively and thoroughly considered and resolved them in our July 2, 2010 Decision. At this point, we only need to address some of the private respondents' misleading points in order to clear the air.

1. The private respondents' reliance on the expiration date of the lease contract, to disprove Mitra's claim that the

room at the Maligaya Feedmill is his residence, is misplaced. This argument is flimsy since the contract did not provide that it was completely and fully time-barred and was only up to February 28, 2010; it was renewable at the option of the parties. That a lease is fixed for a one-year term is a common practice. What is important is that it is renewable at the option of the parties. In the absence of any objection from the parties, the lease contract simply continues and is deemed renewed.[14]

2. In an attempt to show that Mitra considers himself a resident of Puerto Princesa City, the private respondents submitted in their Motion for Reconsideration a colored certified true copy of Mitra's alleged Puerto Princesa City Community Tax Certificate (CTC) dated February 3, 2009[15] allegedly showing Mitra's signature. To recall, we found that based on the records before us, the purported February 3, 2009 CTC did not bear the signature of Mitra. Although the private respondents have belatedly filed this evidence, we carefully examined the recently submitted colored copy of the February 3, 2009 CTC and saw no reason to reverse our finding; the "alleged signature" appears to us to be a mere hazy "superimposition" that does not bear any resemblance at all to Mitra's signature. We, thus, stand by our ruling that the February 3, 2009 CTC, if at all, carries very little evidentiary value. It did it not at all carry Mitra's signature; his secretary's positive testimony that she secured the CTC for Mitra, without the latter's participation and knowledge, still stands unrefuted.

3. The private respondents likewise belatedly submitted a Certification, dated July 17, 2010,[16] from the Municipal Agriculturist of Aborlan, stating that its office does not have any record of the supposed pineapple plantation in Barangay Isaub, Aborlan, Palawan. This late submission was made to show that Mitra has no established business interests in Aborlan. The Certification pertinently states:

> This is to certify that as of this date, there is no existing records/registration in our office regarding the alleged pineapple plantation in Barangay Isaub, Aborlan, Palawan. However, the Office of the Municipal Agriculturist is on the process of gathering data on the Master list of Farmers engaged in growing High Value Commercial Crops in Aborlan.
>
> This certification is issued to MR. BENJAMIN KATON a resident in Penida Subdivision, Puerto Princesa City for whatever legal purposes may serve him best.

We cannot give any evidentiary value to this submission for two reasons. First, it was filed only on reconsideration stage and was not an evidence before us when the case was submitted for resolution. Second, even if it had not been filed late, the Certification does not prove anything; it is, on its face, contradictory. On the one hand, it categorically states that there are no existing records of any pineapple plantation in Barangay Isaub, Aborlan, Palawan; on the other hand, it also expressly states that its records are not yet complete since it is "on the process of gathering data on the Master list of Farmers engaged in growing High Value Commercial Crops in Aborlan."[17] Under what law or regulation the certifying office has the obligation to prepare a list of agricultural business interests in Aborlan has not even been alleged.

At the risk of repetition, we reiterate that Mitra's business interests in Aborlan stand undisputed in the present case. Not only was Mitra able to present photographs of his experimental pineapple plantation; his claim of ownership was also corroborated by the statements of Dr. Carme Caspe, Ricardo Temple and other witnesses.

4. The private respondents also claim that the Court erred in ruling that Mitra did not commit any deliberate material misrepresentation in his COC. We likewise see no merit in this claim. One important point in the present case is that the private respondents failed to prove that there was deliberate material misrepresentation in Mitra's statement on his required residency prior to the May 10, 2010 elections. This, as we stressed in our Decision, is a glaring gap in the private respondents' case:

> We do not believe that he committed any deliberate misrepresentation given what he knew of his transfer, as

> shown by the moves he had made to carry it out. From the evidentiary perspective, we hold that the evidence confirming residence in Aborlan decidedly tilts in Mitra's favor; even assuming the worst for Mitra, the evidence in his favor cannot go below the level of an equipoise, i.e., when weighed, Mitra's evidence of transfer and residence in Aborlan cannot be overcome by the respondents' evidence that he remained a Puerto Princesa City resident. Under the situation prevailing when Mitra filed his COC, we cannot conclude that Mitra committed any misrepresentation, much less a deliberate one, about his residence.
>
> The character of Mitra's representation before the COMELEC is an aspect of the case that the COMELEC completely failed to consider as it focused mainly on the character of Mitra's feedmill residence. For this reason, the COMELEC was led into error - one that goes beyond an ordinary error of judgment. By failing to take into account whether there had been a deliberate misrepresentation in Mitra's COC, the COMELEC committed the grave abuse of simply assuming that an error in the COC was necessarily a deliberate falsity in a material representation. In this case, it doubly erred because there was no falsity; as the carefully considered evidence shows, Mitra did indeed transfer his residence within the period required by Section 74 of the OEC.
>
> The respondents significantly ask us in this case to adopt the same faulty approach of using subjective norms, as they now argue that given his stature as a member of the prominent Mitra clan of Palawan, and as a three term congressman, it is highly incredible that a small room in a feed mill has served as his residence since 2008.
>
> We reject this suggested approach outright for the same reason we condemned the COMELEC's use of subjective non-legal standards. Mitra's feed mill dwelling cannot be considered in isolation and separately from the circumstances of his transfer of residence, specifically, his expressed intent to transfer to a residence outside of Puerto Princesa City to make him eligible to run for a provincial position; his preparatory moves starting in early 2008; his initial transfer through a leased dwelling; the purchase of a lot for his permanent home; and the construction of a house in this lot that, parenthetically, is adjacent to the premises he leased pending the completion of his house. These incremental moves do not offend reason at all, in the way that the COMELEC's highly subjective non-legal standards do.
>
> Thus, we can only conclude, in the context of the cancellation proceeding before us, that the respondents have not presented a convincing case sufficient to overcome Mitra's evidence of effective transfer to and residence in Aborlan and the validity of his representation on this point in his COC, while the COMELEC could not even present any legally acceptable basis to conclude that Mitra's statement in his COC regarding his residence was a misrepresentation.[18]

5. The private respondents submit that the Court erred in relying on jurisprudence (Torayno, Sr. v. COMELEC[19] and Asistio v. Hon. Trinidad Pe-Aguirre[20]) not applicable to the present case. They additionally argue that our ruling in Velasco v. COMELEC[21] should be applied strictly to the present case.

These submissions are wrong, as they do not consider the purposes and the specific points of law for which we cited these cases. Torayno, Asistio and Velasco, read in their proper perspective, fully support our findings and conclusions in this case.

While Torayno does not share the exact factual situation in the present case, we cited the case to illustrate that it is not unknown in this jurisdiction to have a situation where a candidate, due to legal developments (such as reclassification of a component city to a highly urbanized city), is compelled to transfer residence to allow him to continue his or her public service in another political unit that he or she cannot legally access as a candidate, without a change of residence. In the present case, as in Torayno, Mitra would not have had any legal obstacle to his gubernatorial bid were it not for the reclassification of Puerto Princesa City from a component city to a highly urbanized city. The adjustment he had to make was solely in his residence, as he already had, as a Puerto Princesa City resident, knowledge of and sensitivity to the needs of the Palawan electorate.

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The factual antecedents of Asistio are likewise not exactly the same as the facts of the present case, but the Court's treatment of the COC inaccuracies in Asistio fully supports our conclusion that Mitra has established his Aborlan domicile. In Asistio, we held that Asistio's mistake in his residency statement in his COC "is not sufficient proof that he has abandoned his domicile in Caloocan City, or that he has established residence outside of Caloocan City."[22] In the present case, Mitra did not commit any inaccuracies in his COC. In fact, any inaccuracy there may have been was committed by third persons on documents (such as the building permit, contract of sale of the Temple property, and his CTC) that do not have any bearing on his candidacy. Under these circumstances, we would apply a harsher rule to Mitra if we conclude that he has not established his Aborlan domicile.

Our July 2, 2010 Decision finds commonality with our ruling in Velasco in the recognition, in both cases, of the rule of law. But as we explained in our Decision, the similarity ends there as the facts to which the law was applied differed. We thus ruled:

> These cases are to be distinguished from the case of Velasco v. COMELEC where the COMELEC cancelled the COC of Velasco, a mayoralty candidate, on the basis of his undisputed knowledge, at the time he filed his COC, that his inclusion and registration as a voter had been denied. His failure to register as a voter was a material fact that he had clearly withheld from the COMELEC; he knew of the denial of his application to register and yet concealed his non-voter status when he filed his COC. Thus, we affirmed the COMELEC's action in cancelling his COC.
>
> If there is any similarity at all in Velasco and the present case, that similarity is in the recognition in both cases of the rule of law. In Velasco, we recognized - based on the law - that a basic defect existed prior to his candidacy, leading to his disqualification and the vice-mayor-elect's assumption to the office. In the present case, we recognize the validity of Mitra's COC, again on the basis of substantive and procedural law, and no occasion arises for the vice-governor-elect to assume the gubernatorial post.[23]

To summarize, both the COMELEC and private respondents have not shown, through their respective motions, sufficient reasons to compel us to modify or reverse our July 2, 2010 Decision.

Other Developments,
Issues and Rulings

In the course of the Court's consideration of this case, a dissent was entered that contained its own arguments on why our Decision of July 2, 2010 should be reversed. For a complete treatment and presentation of the issues raised, the arguments in the dissent and the refutation are discussed below, separately from the arguments the COMELEC and private respondents themselves raised.

First, the dissent asserts that our conclusion that the private respondents' evidence failed to show that Mitra remained a Puerto Princesa City resident is "way off point" since the private respondents showed, as the COMELEC has found, that Mitra could not have stayed and resided at the mezzanine portion of the Maligaya Feedmill located at Barangay Isaub, Aborlan, Palawan.[24] In concluding that Mitra remained to be a Puerto Princesa City resident, the dissent points to the certification of the Punong Barangay of Sta. Monica, Puerto Princesa City attesting that Mitra continued to reside in that barangay. The dissent also argues that the certification of the Punong Barangay of Sta. Monica, supported by the sworn statement of Commodore Hernandez that Mitra resides in that same barangay, deserves equal if not greater weight than the statement of the Punong Barangay of Isaub, Aborlan; the latter supporting statement should provide the "tilting element on the question of Mitra's continued residency in his domicile of origin."[25]

Second, the dissent faults us for not giving weight to the sworn statements of Maligaya Feed Mill's customers and former employees, who testified that Mitra did not reside at the mezzanine portion of the Feed Mill. It emphasizes

the undisputed point that the room at the mezzanine neither has the usual comfort room nor a kitchen area. Additionally, it argues that we conveniently failed to cite any statutory standard with respect to the determination of whether Mitra's alleged residence constitutes a "residence" as defined by law.[26]

Third, the dissent submits that we gravely erred "in giving credence to Mitra's gratuitous claims of business interests in Aborlan Palawan" to justify our finding that "Mitra's transfer of residence was accomplished not in one single move but, through an incremental process."[27] It notes that Mitra failed to submit material proofs to prove his substantial business interests in Aborlan, Palawan, such as but not limited to - "government issued permits or licenses, tax declarations, or real estate tax payments, property leases and proofs of commercial transactions."[28] The dissent concludes that the suppression of material evidence, which, could directly prove the existence and ownership of the pineapple plantation should be taken against Mitra who claims ownership and existence of these businesses.[29]

Fourth, the dissent argues that we erred in unduly relying on the "dubious" lease contract for being ante-dated. It stresses that the ponencia unreasonably gave credence to the lease contract despite "indicators" of its invalidity, which should have forewarned the Court that the same is not what it purports to be.[30] It also adds that our justification that the lease contract by law may be impliedly renewed from month to month lacks factual basis, since Mitra himself, in his Motion for Reconsideration dated February 13, 2010 before the COMELEC en banc, stated that "he had moved to his own new house physically residing in his newly completed home in Aborlan."[31]

Fifth, the dissent implores the Court to apply to the present case our June 15, 2010 Decision in G.R. No. 192127, Mario Joel T. Reyes v. Commission on Elections and Antonio V. Gonzales,[32] where we resolved to dismiss Reyes' petition via a minute resolution for failure to sufficiently show that the COMELEC gravely abused its discretion in cancelling Reyes' COC for his deliberate misrepresentation on his transfer and establishment of a new residence in Aborlan, Palawan.

Finally, the dissent submits that the mere fact that Mitra won in the May 10, 2010 gubernatorial elections cannot disregard the mandatory one-year residency requirement to qualify as a gubernatorial candidate. It cites our ruling in Velasco v. Commission on Elections,[33] where we ruled that the provisions on material qualifications of elected official should always prevail over the will of the electorate in any given locality; to rule otherwise, would be "to slowly gnaw at the rule of law."

These arguments are addressed in the same order they are posed under the topical headings below.

The private respondents failed to establish by sufficiently convincing evidence that Mitra remained a Puerto Princesa City resident.

The evidence before us, properly considered and carefully reviewed, fully supports our conclusion that the private respondents' evidence failed to show that Mitra remained a Puerto Princesa City resident. As discussed now and in our Decision of July 2, 2010, Mitra adequately proved by substantial evidence that he transferred by incremental process to Aborlan beginning 2008, concluding his transfer in early 2009. Given this proof, the burden of evidence lies with the private respondents to establish the contrary.

Proof to the contrary is sadly lacking, as the dissent's reliance on the Certification of the Punong Barangay of Sta. Monica, Puerto Princesa City is misplaced. The ponencia cannot give full evidentiary weight to the aforementioned Certification which simply stated -

> This is to CERTIFY that ABRAHAM KAHLIL B. MITRA, is a bonafide resident of Purok El Rancho this (sic) Barangay.

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> CERTIFIES FURTHER, that on February 3, 2009, he secure (sic) community tax certificate in this Barangay with CTC No. 16657723.[34]

To be sure, a bare certification - in a disputed situation - cannot suffice to conclusively establish the existence of what the certification alleged. The purported CTC, on the other hand, was neither signed nor thumb-marked by Mitra and, thus, bore no clear indication that it had been adopted and used by Mitra as his own. In our evaluation, we in fact pointedly emphasized that the Puerto Princesa City CTC dated February 3, 2009, if at all, carries little evidentiary value in light of Lilia Camora's (Mitra's secretary) positive declaration that she was the one who procured it, while Mitra's Aborlan CTC dated March 18, 2009 carried Mitra's own signature. Camora fully explained the circumstances under which she secured the CTC of February 3, 2009 and her statement was never disputed.

On the other hand, Commodore Hernandez' declaration on its face did not controvert Carme E. Caspe's sworn statement which adequately proved that Mitra's transfer to Aborlan was accomplished, not in a single move, but through an incremental process that started in early 2008 and concluded in March 2009. Thus, we emphasized in our Decision:

> A sworn statement that has no counterpart in the respondents' evidence in so far as it provides details (particularly when read with the statement of Ricardo Temple) is Carme Caspe's statement on how Mitra's transfer of residence took place. Read together, these statements attest that the transfer was accomplished, not in one single move but, through an incremental process that started in early 2008 and was in place by March 2009, although the house Mitra intended to be his permanent home was not yet then completed.[35]

The COMELEC committed grave abuse of discretion in the appreciation of the evidence and in using wrong considerations which lead it to incorrectly conclude that Mitra is not a resident of Aborlan and that he committed a deliberate misrepresentation in his COC.

Contrary to the dissent's view, the sworn statements of Maligaya Feedmill's customers and former employees that Mitra did not and could not have resided at the mezzanine portion of the Feedmill cannot be given full evidentiary weight, since these statements are in nature of negative testimonies that do not deserve weight and credence in the face of contrary positive evidence, particularly, Carme E. Caspe's testimony, cited above, that Mitra did indeed transfer residence in a process that was accomplished, not in a single move, but through an incremental process that started in early 2008. It is well-settled in the rules of evidence that positive testimony is stronger than negative testimony.[36]

Additionally, we noted in our Decision that the COMELEC committed grave abuse of discretion, as it failed to correctly appreciate that the evidence clearly pointed to fact that Mitra effectively transferred his residence to Aborlan, viz:

> Specifically, it was lost on the COMELEC majority (but not on the Dissent) that Mitra made definite, although incremental transfer moves, as shown by the undisputed business interests he has established in Aborlan in 2008; by lease of a dwelling he established his base; by the purchase of a lot for his permanent home; by his transfer of registration as a voter in March 2009; and by the construction of a house all viewed against the backdrop of a bachelor Representative who spent most of his working hours in Manila, who had a whole congressional district to take care of, and who was establishing at the same time his significant presence in the whole Province of Palawan.[37]

The dissent's observation that the ponencia conveniently failed to cite any statutory standard with respect to the determination of whether Mitra's alleged residence constitutes a "residence" as defined by law is simply not true.[38] Our July 2, 2019 Decision was particularly sensitive to the matter of standards, as we noted that the

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COMELEC used personal and subjective standards in its assessment of Mitra's dwelling when, in fact, the law is replete with standards, i.e., the dwelling must be where a person permanently intends to return and to remain. Thus, we held:

> In considering the residency issue, the COMELEC practically focused solely on its consideration of Mitra's residence at Maligaya Feedmill, on the basis of mere photographs of the premises. In the COMELEC's view (expressly voiced out by the Division and fully concurred in by the En Banc), the Maligaya Feedmill building could not have been Mitra's residence because it is cold and utterly devoid of any indication of Mitra's personality and that it lacks loving attention and details inherent in every home to make it one's residence. This was the main reason that the COMELEC relied upon for its conclusion.
>
> Such assessment, in our view, based on the interior design and furnishings of a dwelling as shown by and examined only through photographs, is far from reasonable; the COMELEC thereby determined the fitness of a dwelling as a person's residence based solely on very personal and subjective assessment standards when the law is replete with standards that can be used. Where a dwelling qualifies as a residence - i.e., the dwelling where a person permanently intends to return to and to remain - his or her capacity or inclination to decorate the place, or the lack of it, is immaterial.[39]

To buttress our finding that the COMELEC used personal and subjective assessment standards instead of the standards prescribed by law, we cited Coquilla v. COMELEC,[40] which characterized the term residence as referring to "domicile" or legal residence, that is "the place where a party actually or constructively has his permanent home, where he, no matter where he may be found at any given time, eventually intends to return and remain (animus manendi).

Mitra's business interests in Aborlan remain undisputed and are supported by the evidence on record.

The dissent's view that Mitra's business interests are not supported by the evidence on record is not accurate. As discussed above and in our July 2, 2010 Decision, Mitra's business interests in Aborlan stand undisputed in the present case. On the one hand, the private respondents failed to present any iota of evidence to disprove Mitra's claims that he had significant investments in Aborlan, such as the expiremental pineapple plantation, farm, farmhouse and cock farm.

On the other hand, Mitra submitted photographs[41] of his experimental pineapple plantation, farm, farmhouse and cock farm to prove his business interests in Aborlan. Carme E. Caspe's and Ricardo Temple's statements also corroborated Mitra's claim that he owns the pineapple plantation which is located in a property near the Maligaya Feedmill. In this regard, Carme E. Caspe's sworn statement pertinently declared:

> 3. Since 2001, Congressman Mitra has been frequently visiting my farm and we often meet at the Maligaya Feedmill and Farm located along National Hi-way, Sitio Maligaya, Barangay Isaub, Aborlan, Palawan.
>
> 4. Sometime in January 2008, Congressman Mitra together with his brother Ramon B. Mitra and his Chief of Staff, Atty. Winston T. Gonzales and some of their friends started an experimental pineapple growing project in a rented farmland located near the Maligaya Feedmill and Farm.
>
> 5. At about the time that they started the pineapple project, Congressman Mitra and Ramon Mitra would from time to time stay overnight in the residential portion of Maligaya Feedmill located along National Hi-way, Sitio Maligaya, Barangay Isaub, Aborlan, Palawan.
>
> 6. Sometime in February 2008, inasmuch as Congressman Abraham Kahlil B. Mitra and Ramon B. Mitra would want to permanently stay in Aborlan, as Congressman Mitra would want to be nearer and have easier access to the entire 2[nd] Congressional District and as they intend to invest in a chicken layer venture in Aborlan in addition to their pineapple project, we ented onto a contract of lease covering the residential portion

> of the Maligaya Feedmill as their residence, a chicken layer house and a growing house for chickens. We also agreed that Congressman Mitra has the option to purchase a portion of the Feedmill where he can erect or contruct his own house if he so desires later.
>
> 7. Congressman Mitra, pursuant to our agreement, immediately renovated and refurbished the residential part in a portion of the Feedmill and as of March 2008 he started to occupy and reside in the said premises bringing with him some of his personal belongings, clothes and other personal effects.
>
> 10. That in January 2009, Congressman Mitra decided to purchase a nearby farmland located behind the Deaf School where he intends to contruct his residential house and farm. However, as he needed time to consummate the sale of the property and to construct his house thereon, we agreed to renew the lease for another year effective February 2, 2009 to February 28, 2010 consisting of, among others, a residential portion of the Maligaya Feedmill.
>
> 11. Sometime in May 2009, Congressman Mitra caused the construction of a house and established a game fowl/fighting cock farm in the lot that he purchased but he continued to reside in the Maligaya Feedmill up to the present.[42]

The photographs of the experimental pineapple plantation, farm, farmhouse and cock farm, coupled with the sworn statements of Carme E. Caspe and Ricardo Temple, substantially prove the existence of Mitra's business interests in Aborlan. Thus, Mitra's failure to submit permits or licenses, tax declarations, real estate tax payments and other proofs of commercial transactions does not negate the fact that he has substantial business interests in Aborlan as he claims.

Incidentally, the dissent's invocation of the adverse presumption of suppression of evidence[43] is erroneous, since it does not arise when the evidence is at the disposal of both parties. [44] In the present case, the required proofs of commercial transactions the dissent cites are public documents which are at the disposal of both parties; they are not solely under the custody of Mitra and can be easily obtained from the municipal offices of Aborlan had the private respondents been minded to do so. The bottom line is that no such evidence was ever presented in this case, and none can and should be considered at this point.

The validity or invalidity
of the lease contract is not determinative of question of Mitra's residence in Aborlan.

Beyond the arguments raised about the invalidity of the lease contract, what is significant for purposes of this case is the immateriality of the issue to the present case. As we emphasized in our Decision:

> The validity of the lease contract, however, is not the issue before us; what concerns us is the question of whether Mitra did indeed enter into an agreement for the lease, or strictly for the use, of the Maligaya Feedmill as his residence (while his house, on the lot he bought, was under construction) and whether he indeed resided there. The notary's compliance with the notarial law likewise assumes no materiality as it is a defect not imputable to Mitra; what is important is the parties' affirmation before a notary public of the contract's genuineness and due execution.[45]

The dissent's thesis - that Mitra's allegation in his Motion for Reconsideration (dated February 13, 2010) before the COMELEC en banc that he had already transferred to the newly constructed house in Aborlan negates the proposition that the lease agreement is extendible from month to month - is misleading. The significance of Mitra's statement in his Motion for Reconsideration that he had already transferred to his newly constructed house in Aborlan must not be read in isolation; it must be appreciated under the backdrop of Mitra's explicit intention to make Aborlan his permanent residence through an incremental transfer of residence, as evidenced by the following:

> (1) his initial transfer through the leased dwelling at the mezzanine portion of the Maligaya Feedmill;
>
> (2) the purchase of a lot for his permanent home; and
>
> (3) the construction of a house on this lot which is adjacent to the premises he was leasing pending the completion of his house.

All these should of course be read with the establishment of Mitra's business interest in Aborlan and his transfer of registration as a voter.

Reyes v. Commission on Elections is not applicable in the present case.

In invoking the applicability of our June 15, 2010 ruling in Reyes v. Commission on Elections, the dissent cites the "explanatory note" penned by Justice Conchita Carpio-Morales recommending the dismissal of Reyes' petition. The explanatory note states:

> To successfully effect a change of domicile, one must demonstrate (1) actual removal or change of domicile; (2) a bona fide intention of abandoning the former place of residence and establishing a new one; and (3) definite acts which correspond with the purpose.
>
> Public respondent committed no grave abuse of discretion in finding that the petitioner had not sufficiently established a change of his domicile from Coron, Palawan, his domicile of origin, to Aborlan, Palawan, his supposed domicile of choice, for failure to show, among others things, (1) actual presence at Aborlan, Palawan, and (2) abandonment of his residence at Coron, Palawan. It thus correctly relied on the Court's pronouncement in Dumpit-Michelena v. Boado that without clear and positive proof of the concurrence of the requirements for a change of domicile, the domicile of origin continues.
>
> Reading Section 78 of the Omnibus Election Code with the constitutional qualifications for a Member of the House of Representatives, petitioner's false representation in his COC regarding his residence, which affects his qualifications, gave cause for the COMELEC to cancel the same.[46]

On June 15, 2010, the Court issued a Minute Resolution dismissing Reyes' petition, which states:

> The Court Resolved to DISMISS the petition for failure thereof to sufficiently show that any grave abuse of discretion was committed by the Commission on Elections in rendering the challenged resolutions which, on the contrary, appear to be in accord with the facts and applicable law and jurisprudence.[47]

This Resolution found no grave abuse of discretion and upheld the March 25, 2010 Resolution of the COMELEC Second Division[48] and May 7, 2010 Resolution of the COMELEC en banc.[49] In this March 25, 2010 Resolution, the COMELEC Second Division found:

> An evaluation, however, of the evidence presented by the parties vis-à-vis the three requirements for a successful change of domicile would show that the petitioner is correct.
>
> First, the alleged residence of respondent is a mere beach house or a lodging house with a roof made of pawid as shown in the Declaration of Real Property of Clara Espiritu Reyes, the wife of the respondent. This description of the property is confirmed by two photographs attached to the Memorandum of the petitioner. By its very nature, a beach house is a mere temporary abode, a lodging house where people stay merely as transients. It is not meant to be a permanent place to live in. As the Supreme Court declared in Dumpit Michelena v. Boado, a beach house is at most a place of temporary relaxation and it can hardly be considered a place of residence. With this kind of property, it can scarcely be said that respondent has the intention of remaining there permanently or for an indefinite period of time.
>
> Second, respondent has failed to show actual presence at his domicile of choice. Respondent himself admitted that he goes only to Aborlan whenever he gets reprieves from work as most of the time he stays at Puerto

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> Princesa City, where he also resides with his wife. His witnesses also confirm this saying that all Palaweños know that the office of the governor is at the capitol of Puerto Princesa City, where respondent and his wife stay if there is work at the office. However, considering that Aborlan is only about an hour's away from Puerto Princesa, it is odd that respondent and his wife never go home to Aborlan after office hours if he intended to establish his domicile of choice in the said municipality. It is also unusual that respondent's wife still stays at Puerto Princesa City while she works as manager of Palawan Agricultural and Animal Husbandy Corporation, which is based in Aborlan. This conduct is not indicative of an intent to establish their domicile at Aborlan.
>
> Third, respondent failed to show that he already cut his ties with Coron, Palawan as his domicle. Although respondent declared that as early as 2008, he has already transferred his domicile at Aborlan, still he secured his Community Tax Certificate (CTC) for the year 2009 at Coron.
>
> Respondent tried to wiggle out from this tight spot by explaining that it was secured by his secretary, who through force of habit inadvertently got it for him. However, such explanation proved futile when respondent was confronted with the fact that he still used the said CTC in establishing his identity when he signed a Special Power of Attorney on January 12, 2009 and when he signed a contract in behalf of the Palawan Provincial Government on August 10, 2009 even when he has supposedly secured another CTC from Aborlan on April 7, 2009.
>
> Thus, even in August of 2009, less than a year prior to the May 10, 2010 election, respondent still portrayed himself as a resident of Coron. The intention then to abandon the said place as his domicile is wanting.
>
> Based on the foregoing discussions alone, it is at once apparent the three-point requirements for the abandonment of a domicile and the establishment of a new one do not concur in the case of the respondent.[50]

Contrary to the dissent's view, no parallelism can be drawn between this ruling and the present case, so that this ruling cannot apply to the latter.

First, the dissent's citation of Justice Carpio-Morales' explanatory note recommending the dismissal of Reyes' petition cannot be considered a precedent that should be made applicable to the present case. The explanatory note, while reflective of the Court's thinking, is not a decision nor an opinion of the Court. It remains what its description connotes - an explanatory note provided by one Justice and approved by the Court - and nothing more; what binds the Court is its pronouncement that no grave abuse of discretion transpired in the COMELEC's consideration of the case. Under this legal situation, what assumes significance are the COMELEC Resolutions that the Court effectively upheld when it issued the June 15, 2010 Minute Resolution dismissing Reyes' petition.

Second, the factual circumstances in Reyes are entirely different from the present case; no parallelism can be drawn so that the application of the ruling in Reyes cannot be bodily lifted and applied to Mitra. In Reyes, the COMELEC ruled that Reyes committed a material misrepresentation in his COC when he declared that his residence is Tigman, Aborlan, Palawan and that he is eligible for the office he seeks to be elected to. The COMELEC so concluded after it found that the evidence showed that Reyes failed to prove that (1) he had the intention to remain permanently in Aborlan since his alleged residence is a mere beach house which by its very nature is a temporary place of residence as held by the Court in Dumpit Michelana v. Boado;[51] 2) he had actual presence at his domicile of choice; and (3) that he had already transferred from his domicile (Coron, Palawan) to Tigman, Aborlan Palawan. The COMELEC even found, on the matter of CTC, that Reyes consistently used his Coron CTC in his transactions, thus negating his explanation that the CTC was procured without his knowledge and consent.

In contrast, we found in the present case that Mitra did not deliberately misrepresent his Aborlan residence to deceive or mislead the Palawan electorate since he in fact adduced positive evidence of transfer of residence which the private respondents failed to sufficiently controvert. In this regard, we noted with emphasis that Mitra

undertook "incremental moves" to his new domicile in Aborlan as evidenced by the following: (1) his expressed intent to transfer to a residence outside of Puerto Princesa City to make him eligible for a provincial position; (2) his preparatory moves starting in early 2008; (3) the transfer of registration as a voter in March 2009; (4) his initial transfer through a leased dwelling at Maligaya Feedmill; (5) the purchase of a lot for his permanent home; and (6) the construction of a house on the said lot which is adjacent to the premises he was leasing pending the completion of his house.[52] The issue regarding Mitra's CTC, too, was satisfactorily explained and is far different from the obtaining facts in the case of Reyes.

No occasion exists to apply the rule of the primacy of the will of people since Mitra did not commit any deliberate misrepresentation; in fact, he proved that he transferred his residence to Aborlan within the period required by law.

The dissent contends that Mitra's election as Governor "did not render the present case moot and academic or lift the statutory one-year residency requirement for him to qualify for the gubernatorial post."[53] The dissent apparently perceives Mitra's electoral victory as a major consideration in our Decision of July 2, 2010. Unfortunately, the dissent is mistaken in its appreciation of the thrust of our Decision; we in fact ruled that no reason exists to appeal to the primacy of the electorate's will since Mitra did not commit any material misrepresentation in his COC. We said:

> We have applied in past cases the principle that the manifest will of the people as expressed through the ballot must be given fullest effect; in case of doubt, political laws must be interpreted to give life and spirit to the popular mandate. Thus, we have held that while provisions relating to certificates of candidacy are in mandatory terms, it is an established rule of interpretation as regards election laws, that mandatory provisions, requiring certain steps before elections, will be construed as directory after the elections, to give effect to the will of the people.
>
> Quite recently, however, we warned against a blanket and unqualified reading and application of this ruling, as it may carry dangerous significance to the rule of law and the integrity of our elections. For one, such blanket/unqualified reading may provide a way around the law that effectively negates election requirements aimed at providing the electorate with the basic information for an informed choice about a candidate's eligibility and fitness for office. Short of adopting a clear cut standard, we thus made the following clarification:
>
> We distinguish our ruling in this case from others that we have made in the past by the clarification that COC defects beyond matters of form and that involve material misrepresentations cannot avail of the benefit of our ruling that COC mandatory requirements before elections are considered merely directory after the people shall have spoken. A mandatory and material election law requirement involves more than the will of the people in any given locality. Where a material COC misrepresentation under oath is made, thereby violating both our election and criminal laws, we are faced as well with an assault on the will of the people of the Philippines as expressed in our laws. In a choice between provisions on material qualifications of elected officials, on the one hand, and the will of the electorate in any given locality, on the other, we believe and so hold that we cannot choose the electorate will.

Earlier, Frivaldo v. COMELEC provided the following test:

> [T]his Court has repeatedly stressed the importance of giving effect to the sovereign will in order to ensure the survival of our democracy. In any action involving the possibility of a reversal of the popular electoral choice, this Court must exert utmost effort to resolve the issues in a manner that would give effect to the will of the majority, for it is merely sound public policy to cause elective offices to be filled by those who are the choice of the majority. To successfully challenge a winning candidate's qualifications, the petitioner must clearly demonstrate that the ineligibility is so patently antagonistic to constitutional and legal principles that overriding

> such ineligibility and thereby giving effect to the apparent will of the people would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote. [Emphasis supplied.]

With the conclusion that Mitra did not commit any material misrepresentation in his COC, we see no reason in this case to appeal to the primacy of the electorate's will. We cannot deny, however, that the people of Palawan have spoken in an election where residency qualification had been squarely raised and their voice has erased any doubt about their verdict on Mitra's qualifications.[54]

Under these terms, we cannot be any clearer.

WHEREFORE, premises considered, we resolve to DENY with FINALITY, for lack of merit, the motions for reconsideration and motion for oral arguments now before us. Let entry of judgment be made in due course.

SO ORDERED.

Corona, C.J., Carpio, Nachura, Leonardo-De Castro, Peralta, Bersamin, Del Castillo, Villarama, Jr., Mendoza, and Sereno, JJ., concur.
Carpio Morales and Abad, JJ., on leave.
Velasco, Jr., J., pls. see dissenting opinion.
Perez, J., join the dissent of J., Velasco, Jr.

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[1] Rollo, pp. 1176-1185.

[2] Id. at 1188-1250.

[3] Id. at 1123-1154.

[4] Id. at 1176.

[5] Id. at 1198-1200.

[6] Pates v. Commission on Elections, G.R. No. 184915, June 30, 2009, 591 SCRA 481. Section 2 of Rule 64 of the Rules of Court provides that "[a] judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on certiorari under Rule 65, except as hereinafter provided."

[7] Nos. L-49705-09 and L-49717-21, February 8, 1979, 88 SCRA 251.

[8] G.R. No. 81954, August 8, 1989, 176 SCRA 84.

[9] G.R. No. 170522, November 20, 2006, 507 SCRA 426, 437.

[10] CONSTITUTION, Article VIII, Section 1, par. 2.

[11] Article IX(C), Section 2(2), par. 2, of the 1987 CONSTITUTION provides: "Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable."

[12] Section 5, Rule 64 of the Rules of Court provides: "[f]indings of fact of the [COMELEC], supported by substantial evidence, shall be final and non-reviewable."

[13] Rollo, pp. 65-66.

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[14] See Article 1670 of the Civil Code.

[15] Annex "1" of the Private Respondents' Motion for Reconsideration dated July 20, 2010; rollo, p. 1253.

[16] Annex "2" of the Private Respondents' Motion for Reconsideration dated July 20, 2010; id. at 1254.

[17] Ibid.

[18] Id. at 1146-1148.

[19] G.R. No. 137329, August 9, 2000, 337 SCRA 574.

[20] G.R. No. 191124, April 27, 2010.

[21] G.R. No. 180051, December 24, 2008, 575 SCRA 590.

[22] Supra note 20.

[23] Rollo, p. 1150.

[24] Justice Velasco's Dissenting Opinion, p. 3.

[25] Id. at 3-4.

[26] Id. at 7.

[27] Id. at 7-8.

[28] Id. at 8-9.

[29] Ibid.

[30] Ibid.

[31] Id. at 11.

[32] In a Resolution dated August 3, 2010, the Court resolved to deny with finality the motion for reconsideration filed by petitioner Mario Joel T. Reyes.

[33] Supra note 21.

[34] Rollo, p. 136.

[35] Id. at 1144-1145.

[36] Batiquin v. Court of Appeals, G.R. No. 118231, July 5, 1996, 258 SCRA 334.

[37] Rollo, p. 1146.

[38] Justice Velasco's Dissenting Opinion, p. 7.

[39] Rollo, pp. 1145-1146.

[40] G.R. No. 151914, July 31, 2002, 385 SCRA 607, 616, citing Aquino v. COMELEC, 248 SCRA 400, 420 (1995).

[41] Mitra also submitted the sworn affidavit dated December 9, 2009 of Ryan A. Natividad (Natividad) who personally took the photographs. Natividad narrated:

- On 08 December 2009, I personally went to Sitio Tagpit and Sitio Maligaya, both in Barangay Isaub, Aborlan,

Palawan.

- In particular, I took photographs in the (a) the pineapple and corn farm of Congressman Abraham Kahlil B. Mitra in Sito Tagpit; (2) Maligaya Feedmill and the residential unit within the Feedmill located along National Hi-way, Sitio Maligaya and (3) the gamefowl and/or fighting cock farm and house under construction of Congressman Abraham Kahlil B. Mitra.

- I caused the printing of the photographs of I (sic) took.

- There are a total of forty (40) photographs and each photograph bears my signature and the date shown thereon.

- I am executing this affidavit to prove that the printed photographs attached herewith with my signature and date thereon are faithful and unaltered images of the photographs I personally took and cause to be printed. Rollo, p. 199.

[42] Rollo, p. 730.

[43] Section 3(e), Rule 131 of the Rules of Court states:

x x x x

(e) That evidence willfully suppressed would be adverse if produced.

x x x x

[44] People v. Navaja, G.R. No. 104044, March 30, 1993, 220 SCRA 624.

[45] Rollo, p. 1144.

[46] Cited in Justice Velasco's Dissenting Opinion, p. 11.

[47] G.R. No. 192127, Mario Joel T. Reyes v. The Commission on Elections and Antonio V. Gonzales, rollo, p. 548.

[48] Id. at 39-56.

[49] Id. at 57-63.

[50] Id. at 48-50.

[51] G.R. Nos. 163619-20, November 17, 2005, 475 SCRA 290.

[52] See p. 3 of this Resolution.

[53] Justice Velasco's Dissenting Opinion, p. 12.

[54] Rollo, pp. 1151-1152.

D I S S E N T I N G O P I N I O N
(to the Resolution Denying the Motions for Reconsideration)

VELASCO, JR., J.:

In my dissent to the July 2, 2010 Decision in this case, I excepted to the majority's factual finding that petitioner Mitra has, during the period material, transferred his residence from Puerto Princesa City, Palawan to Aborlan, Palawan. In its strained disquisition, the majority agreed that the COMELEC grossly misread the import of the

evidence submitted by the parties by using wrong considerations to arrive at the faulty conclusion that Mitra has not transferred his residence to Aborlan, Palawan from Puerto Princesa City. On the contrary, there is substantial evidence on record militating against this erroneous factual finding of the majority. To be sure, the majority Decision did not point to any clear and convincing evidence that would show how, when and exactly where Mitra had actually, physically and permanently established his domicile one year prior to the May 10, 2010 elections.

Then as now, I maintain my original position and offer another dissent to the Resolution denying respondents' separate motions for reconsideration.[1]

The Office of the Solicitor General, for the COMELEC, urges reconsideration on the sole argument that the Court erred when it reviewed the probative value of the evidence presented by the parties and substituted its own factual findings with that of the poll body.

On the other hand, private respondents raised several assignments of error, which may be summarized into six: first, the petition failed to point out how the COMELEC committed grave abuse of discretion; the Court took the cudgels for Mitra and compensated for a burden Mitra failed to discharge; second, the Court erred in concluding that the COMELEC used subjective and non-legal standards in assessing the photographs Mitra submitted; third, the Court erred in finding that the uncorroborated evidence submitted by Mitra is sufficient to overcome and overturn the findings of fact of the COMELEC; fourth, the Court erred when it focused on the COMELEC's opinion regarding the photographs submitted by Mitra, but did not consider the other pieces of evidence showing that Mitra did not transfer his residence to or reside in Aborlan, Palawan; fifth, considering that Mitra did not reside in or transfer his residence to Aborlan, Palawan, the entry made in his certificate of candidacy (COC) that he is a resident of Aborlan, Palawan is a deliberate misrepresentation; and sixth, the jurisprudence relied upon by the majority is inapplicable to the instant case.

The ponente brushes all these assignments and arguments aside for being mere repetitions of respondents' previous arguments already addressed in the underlying Decision. And while stating that no new and substantial arguments have been raised in the subject motions, the ponencia nonetheless addresses some points in a bid to reinforce the said decision.

I vote to grant the motions for reconsideration.

First, the ponente's assertion in the Resolution that "[s]pecifically, the respondents' evidence failed to show that Mitra remained a Puerto Princesa City resident"[2] is way off the point. As may be recalled, in the petition for the cancellation of Mitra's COC, private respondents assert--and the substantial evidence they submitted shows--that Mitra, contrary to what he entered in his COC, had not transferred his residence or domicile to Aborlan, Palawan. Private respondents have duly shown, and COMELEC found, that Mitra could not have stayed and resided at the mezzanine of the Maligaya Feed Mill located at Barangay Isaub, Aborlan. Private respondents need not prove that Mitra continued to reside in Puerto Princesa City. Using the words of the ponente in the assailed decision--in giving credence to the lease contract covering the room at the mezzanine of the feed mill--that the issue of Mitra's continued residency at Puerto Princesa City, Palawan is not the issue before us; what concerns us is the question of whether Mitra did indeed[3] transfer his residence to and resided at the mezzanine of the Maligaya Feed Mill in Barangay Isaub, Aborlan, Palawan at least a year before the last nationwide synchronized election to qualify him to run as governor of Palawan.

The foregoing notwithstanding, the evidence on record does persuasively show that Mitra remained and continued to be a resident of Sta. Monica, Puerto Princesa City. The punong barangay of Sta. Monica, that city, attested to the fact that Mitra continued to reside in that barangay. Of the same tenor is the affidavit executed by the punong barangay's neighbor, one Commodore Nicanor Hernandez. These sworn statements have remained

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uncontroverted.

Verily, the ponente accords probative value to the sworn statement of the punong barangay of Isaub, where Mitra purportedly transferred his new residence to, on the postulate that "the sworn statement of the Punong Barangay of Isaub, Aborlan should carry a lot more weight than the statements of punong barangay officials elsewhere since it is the business of a punong barangay to know who the residents are in his own barangay."[4] Following the ponente's line, is it not logical to say that the certification of the punong barangay of Sta. Monica, Puerto Princesa City, supported as it is with the sworn statement of Commodore Hernandez, deserves equal if not greater probative weight? Indeed, it is the business of the punong barangay of Sta. Monica, Puerto Princesa City to determine and know who the residents are in his barangay, Mitra's domicile of origin and whether he continues or continued to reside therein at the time relevant to this case.

Needless to say, Commodore Hernandez's declaration as to Mitra's continued stay in Sta. Monica, Puerto Princesa City should provide the tilting element on the question of Mitra's continued residency in his domicile of origin. A dictum that bears stressing is that one's domicile of origin is not easily lost; it is lost only when there is an actual removal or change of domicile, a bona fide intention of abandoning the former residence and establishing a new one, and acts which correspond to such purpose.[5] Thus, it is substantially shown, despite his averred and expressed intent to transfer his residence to Aborlan, Palawan, that Mitra did not abandon his domicile of origin in Sta. Monica, Puerto Princesa City, which, when viewed together with substantial evidence that he did not actually reside in Brgy. Isaub, Aborlan, Palawan, would indubitably show that Mitra remained a resident of Puerto Princesa City.

Second, Mitra, in his petition before the Court, did not even allege that the COMELEC committed grave abuse of discretion in its determination of the facts. To reiterate what I said in my earlier dissent:

> The ponencia did not even specify which of Mitra's issues merited this Court's exercise of its limited certiorari jurisdiction. It merely concluded that grave abuse of discretion was committed and proceeded to evaluate and calibrate the evidence submitted by the parties. A mere allegation of grave abuse of discretion, no matter how adamant, should not merit affirmative action from this Court when the same is not supported by clear and convincing examples or evidence. Otherwise, we will be constrained to review the factual findings on each and every case submitted to our jurisdiction.[6]

In an attempt to settle this issue, the ponente offers this ratiocination:

> Our Decision clearly pointed out Mitra's submissions and arguments on grave abuse of discretion, namely, that the COMELEC failed to appreciate that the case is a cancellation of COC proceeding and that the critical issue is the presence of deliberate false material representation to deceive the electorate. In fact, Mitra's petition plainly argued that the COMELEC's grave abuse of discretion was patent when it failed to consider that the ground to deny a COC is deliberate false representation. We completely addressed this issue and in the process analyzed the reasoning in the assailed COMELEC decision. At every step, we found that the COMELEC committed grave abuse of discretion in the appreciation of evidence.[7] (Emphasis supplied.)

It is true that Mitra, in his petition, imputed grave abuse of discretion on the COMELEC when the poll body determined his residency eligibility instead of outrightly holding that the former intentionally and deliberately committed false representation in his COC.[8]

On one hand, a close perusal of the COMELEC En Banc Resolution, viewed against the backdrop of the pieces of evidence submitted, would readily show that the electoral body found Mitra deliberately misrepresenting his residence to be at Aborlan, Palawan when he, in fact, did not establish and transfer his residence or domicile to that town. If one has not established a transfer of residence from his domicile of origin to another place, but states

in his COC that he is a resident of the new place when, in fact, he is not, then it logically and necessarily follows that a deliberate misrepresentation of fact has been committed. Consequently, the COC must be canceled on account of such a deliberate misrepresentation. Thus, the majority gravely errs in its holding on Mitra not deliberately misrepresenting, in his COC, the matter of his residence. The substantiated findings of facts by the COMELEC pointed to such misrepresentation.

On the other hand, a close scrutiny of Mitra's petition would reveal that he never alleged that the COMELEC committed grave abuse of discretion in its findings of fact. He merely described the COMELEC's findings of fact as being based on "sheer speculation"[9] without, however, offering any substantial proof to validate and corroborate his description.

As I posited in my earlier dissent, the COMELEC's rulings were not based on sheer speculation, as the ponencia, echoing Mitra's posture, would have it. Contrary to the ponencia's conclusion, the COMELEC was not fixated on what were shown by the stark photographs of the room at the mezzanine of the feed mill, for the evidence adduced by private respondents and those submitted by Mitra himself do show that he could not have transferred his residence to Aborlan, Palawan. To be sure, the ponencia never touches on the sworn statements of some residents of Aborlan, particularly Maligaya Feed Mill's customers and former employees, who were one in saying that Mitra did not reside at the mezzanine of the said feed mill, albeit he has been seen visiting the place. These visits, however, were only for a short period to meet some people, but never to stay therein for the length of time material, as Mitra would make the Court believe. Evidently, and this is uncontroverted, said room at the mezzanine of the feed mill neither has the usual comfort room nor a kitchen area. Mitra proffers this rented room as his residence in Isaub, Aborlan, Palawan, but failed to rebut said attestations showing he never resided therein, and which the ponencia conveniently brushes aside and fails to consider. Thus, the majority succumbed into a strained disquisition--unsupported by the evidence on record--that the evidence submitted in the instant case decidedly tilts in Mitra's favor and such cannot go below the level of equipoise in its appreciation.

The ponencia also points out that the photographs Mitra presented are not reasonable incremental proofs to disprove that he resided in the feed mill structure. It makes much of the alleged personal and subjective assessment standards used by the COMELEC in assessing the photographs.

Contrary to the ponente's views, the assessment of the pieces of evidence, like the photographs thus presented, was not made in a piecemeal fashion. It was made in an integral manner, treating and taking a piece of evidence in conjunction with other evidentiary materials submitted by the parties. Verily, as I earlier pointed out, the COMELEC's rulings did not rely mainly on the aforesaid photographs, but merely indicated in the assailed COMELEC Resolutions its impression of his supposed residential room. As it were, the poll body indeed pointed out other pieces of substantial evidence supporting its conclusion. In addition, the ponente points out that the law is replete with standards relative to personal and subjective assessment, but conveniently does not cite any statutory standard hewing to the credibility of the fact of Mitra's residency vis-à-vis the uncontroverted sworn statements of the feed mill's customers, former employees and some Aborlan residents, who unanimously attested that Mitra never resided at the mezzanine of said feed mill.

Consequently, the COMELEC en banc indisputably neither grossly erred nor gravely abused its discretion in affirming its Division's well-premised findings that Mitra, despite his expressed intent to transfer his residence outside Puerto Princesa City to qualify to run as Governor, did not actually transfer to and reside in Aborlan, Palawan.

Third, much less can it be said that Mitra's "transfer of residence was accomplished, not in one single move but, through an incremental process," as the ponencia would have it. The ponencia attempts to buttress this

incremental process transfer theory by ratiocinating that "Mitra made definite, although incremental transfer moves, as shown by the undisputed business interests he has established in Aborlan in 2008; by the lease of a dwelling where he established his base; by the purchase of a lot for his permanent home; by his transfer of registration as a voter in March 2009; and by the construction of house."[10]

Indeed, the fact that Mitra bought a lot in Aborlan and was in the process of constructing a house thereon may well reflect his intent to transfer his residence to said municipality. But the fact of purchase does not amount either to a transfer of residence or an incremental transfer of his residence viewed from the clear statutory standards. To successfully effect a change of residence, one must demonstrate the concurrence of the following:

(1) residence or bodily presence in a new locality;
(2) an intention to remain there;
(3) an intention to abandon the old domicile; and
(4) definite acts which correspond with the purpose.[11]

Considering the foregoing standards, the fact that Mitra has business interests in Aborlan, if that really be the case, would not constitute, without more, an incremental process of a transfer of residence. Besides, as discussed above, the lease of a purported mezzanine room at a feed mill without actual physical presence and residency cannot be equated to a transfer of residence or domicile.

Even granting arguendo that having business interests may constitute an incremental transfer of residence, I strongly note that the ponencia gravely errs in giving credence to Mitra's gratuitous claims of business interests in Aborlan, Palawan. Proofs of business interests are the easiest to provide through government issued permits or licenses, tax declarations or real estate tax payments, property leases and proofs of commercial transactions. But these material proofs are conspicuously missing. Take, for instance, the alleged pineapple plantation. Save for the photographs of a man in the middle of an unidentified pineapple farm and the statements of Mitra's witnesses, there is no scintilla of evidence to persuasively show that Mitra indeed owns and operates this pineapple plantation. Even the location of this purported plantation is shrouded in mystery since no direct evidence was presented to prove its location. Verily, the suppression of material evidence which could directly prove the existence and ownership of the pineapple plantation should be taken against Mitra who claims ownership and existence thereof.

And in the case of the alleged cock farm, it is persuasively shown from the statements of Mitra's own witnesses that the cock farm was started and came into existence only after the commencement of the construction of Mitra's house at the Temple property.

Consequently, Mitra's transfer of registration as a voter to Aborlan in March 2009 ought to be struck down as without legal effect. The law requires a six-month residency in a municipality before such transfer.

Fourth, the ponencia equally errs in its specious reliance on the lease contract, whose validity is dubious for being antedated as shown by its non-inclusion in the notarial report covering the time it was supposed to have been notarized. Significantly, the ponencia glosses over the validity angle. If a seeming official document is spurious, it stands to reason that it should not be accorded any evidentiary weight. But without so much of an explanation, the ponencia gives credence to the lease contract when precisely the indicators of its being a sham should have put the Court on guard that what the lease contract purports to convey could not be true. It cannot be over-emphasized that Mitra neither controverted allegations of what amount to forgery nor proffered evidence to prove the lease contract's veracity and validity, notwithstanding evidentiary indications to the contrary. Besides, if the lease contract is valid, its effectivity was only until February 28, 2010, absent showing that it was renewed considering that Mitra's house in Aborlan is still under construction. This bolsters the fact that the room at the mezzanine of

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the feed mill was not really Mitra's residence in the time relevant, i.e., a year before the election. It bears to state that one intending to run in the place where he has transferred his voter's registration must continuously reside in that place for one year.

The ponencia conveniently rationalizes that the lease contract in question, like any lease agreement, can be extended from month to month. While such a view may be legally correct, it ought to be pointed out that Mitra no less asserted in his motion for reconsideration before the COMELEC en banc that he had already abandoned his purported residence (the mezzanine room at Maligaya Feed Mill) at the very least on February 13, 2010, when he filed said motion by averring that he had "MOVED to his own new house physically residing in his newly completed home in ABORLAN."[12] Clearly then, the ponencia's rationalization must fail for lack of factual basis.

At any event, Mitra's averment that his newly constructed house was already completed by then (February 2010) remained unsubstantiated. And it must be noted in this regard that Mitra has not shown any proof that he has indeed continued the lease on a month-to-month basis, if this was the case, when he had full opportunity to do so during the proceedings at the COMELEC.

As discussed in my earlier dissent, the quantum of evidence necessary to prove a candidate's disqualification in a quasi-judicial or administrative hearing needs only such relevant evidence as a reasonable mind will accept to support a conclusion.[13] As an independent constitutional body tasked with specific duty to enforce and administer all election laws, the COMELEC's decisions must be given utmost weight and importance. Appropriately, this Court, in its review of the factual determinations of the COMELEC, must find clear and convincing proof of grave abuse of discretion to justify a reversal thereof. Else, the Court ought to confine itself to resolving only questions of law.

For the foregoing reasons, I find the instant motions for reconsideration to be meritorious. Let me reiterate that the COMELEC en banc did not gravely abuse its discretion in affirming the findings of its Second Division, supported as they are by substantial evidence on record. For certiorari to prosper, there must be a showing that the COMELEC acted with "grave abuse of discretion," a term which means such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction or excess thereof.[14] Such abuse is absent in the instant case. Accordingly, this Court ought not to substitute the COMELEC's findings with its own factual findings, for certifying in his COC that he is a resident of Aborlan, Palawan when in fact he is not, Mitra indisputably committed a deliberate misrepresentation which merits the cancellation thereof.

At this juncture, I earnestly invite attention to the Court's Decision of June 15, 2010, wherein it correctly dismissed a similar case involving a vice-gubernatorial candidate of Palawan. The case is Mario Joel T. Reyes v. Commission on Elections and Antonio V. Gonzales,[15] G.R. No. 192127, in which petitioner Reyes' COC was also canceled by the COMELEC on account of deliberate misrepresentation for certifying that he had transferred his residence to Aborlan, Palawan when, like herein petitioner Mitra, he had not established a new domicile or residence in Aborlan. The Court held that the COMELEC did not gravely abuse its discretion in canceling Reyes' COC. That holding must apply to the instant case.

The fact that Mitra garnered the majority votes in the gubernatorial election in Palawan does not render this case moot and academic or lift the statutory one-year condition sine qua non residency requirement for him to qualify to run for the gubernatorial post in that province. As it were, the requirement on residency is not merely a technical or formal requisite. Verily, winning the election does not substitute for the specific requirements of law on a person's eligibility for public office which he lacked, and does not cure his material misrepresentation which is a valid ground for the cancellation of his COC.[16]

I subscribe to our ruling in Velasco v. Commission on Elections and Mozart P. Panlaqui[17] that, indeed, "x x x in a choice between provisions on material qualifications of elected officials, on the one hand, and the will of the electorate in any given locality, on the other, we believe and so hold that we cannot choose the electorate will. The balance must always tilt in favor of upholding and enforcing the law. To rule otherwise is to slowly gnaw at the rule of law."

In sum, it must be noted that residency or domicile is a matter of personal intention. In deciding and asserting to transfer his legal residence so he can qualify to run for the gubernatorial seat of Palawan, Mitra is entirely free to do so. However, for this transfer to be effective, it must be supported by clear and convincing proofs that he had effectively abandoned his former residence or domicile of origin and that his intention is not doubtful. Verily, residence or domicile once established is considered to continue and will not be deemed lost until a new one is established.[18] It must be noted further that Mitra from childhood until his last election as congressman has consistently maintained Puerto Princesa City, Palawan as his domicile. He asserted moving to Barangay Isaub, Aborlan, Palawan, and thereafter claimed the same to be his new residence. This claim, however, is dismally unsupported by the records. The various business interests of Mitra and the lease contract entered into by him for a period of one year ending on February 28, 2010 on a small room in the mezzanine of Maligaya Feed Mill--as correctly viewed by the COMELEC--do not prove his intent to abandon his domicile of origin; more so when proofs are presented that he continues to live and reside in his domicile of origin in Sta. Monica, Puerto Princesa City. The intention to establish a residence or domicile must be an intention to remain indefinitely or permanently in the new place.[19] This element is clearly lacking in this instance.

Finally, noting that Mitra is already barred from running for congressman due to the constitutional consecutive three-term limit, his purported transfer to Aborlan so that he could continue further his political career makes his intent and assertions suspect when unsupported by his actual physical presence and residency in Aborlan. The best test of intention to establish legal residence comes from one's acts and not by mere declarations alone.[20]

Accordingly, I vote to GRANT the motions for reconsideration.

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[1] Rollo, pp. 1176-1186, Motion for Reconsideration dated July 19, 2010 filed by COMELEC; id. at 1188-1252, Motion for Reconsideration with Motion for Oral Arguments dated July 20, 2010 filed by private respondents.

[2] Resolution, p. 2.

[3] Rollo, p. 1144; July 2, 2010 Decision, p. 22.

[4] Id. at 1142; July 2, 2010 Decision, p. 20.

[5] Romualdez-Marcos v. Commission on Elections, G.R. No. 119976, September 18, 1995, 248 SCRA 300, 331; citing 18 AM Jur 219-220.

[6] Rollo, pp. 1163-1164; Dissenting Opinion, pp. 9-10.

[7] Resolution, p. 10.

[8] Rollo, p. 17; petition, p. 15.

[9] Id. at 28-29; petition, pp. 26-27.

[10] Id. at 1146; July 2, 2010 Decision, p. 24.

[11] Limbona v. Commission on Elections, G.R. No. 181097, June 25, 2008, 555 SCRA 391, 402; citing Gallego

v. Verra, 73 Phil. 453, 456 (1941); Dumpit-Michelena v. Boado, G.R. Nos. 163619-20, November 17, 2005, 475 SCRA 290.

[12] Rollo, p. 227; Motion for Reconsideration dated February 13, 2010, p. 227.

[13] Id. at 1170; Dissenting Opinion, p. 16; citing Hon. Primo C. Miro v. Reynaldo M. Dosono, G.R. No. 170697, April 30, 2010.

[14] Patalinghug v. Commission on Elections, G.R. No. 178767, January 30, 2008, 543 SCRA 175, 188, citing Guerrero v. Commission on Elections, G.R. No. 137004, July 26, 2000, 336 SCRA 458, 466.

[15] Associate Justice Conchita Carpio-Morales, ponente. The explanatory note on the dismissal of the petition reads:

To successfully effect a change of domicile, one must demonstrate (1) an actual removal or change of domicile; (2) a bona fide intention of abandoning the former place of residence and establishing a new one; and (3) definite acts which correspond with the purpose.

Public respondent committed no grave abuse of discretion in finding that petitioner had not sufficiently established a change of his domicile from Coron, Palawan, his domicile of origin, to Aborlan, Palawan, his supposed domicile of choice, for failure to show, among other things, (1) actual presence at Aborlan, Palawan, and (2) abandonment of his residence at Coron, Palawan. It thus correctly relied on the Court's pronouncement in Dumpit-Michelena v. Boado that without clear and positive proof of concurrence of the requirements for a change of domicile, the domicile of origin continues.

Reading Section 78 of the Omnibus Election Code with the constitutional qualifications for a Member of the House of Representatives, petitioner's false representation in his CoC regarding his residence, which affects his qualifications, gave cause for the COMELEC to cancel the same.

[16] Ugdoracion, Jr. v. Commission on Elections, G.R. No. 179851, April 18, 2008, 552 SCRA 231, 243.

[17] G.R. No. 191124, April 27, 2010.

[18] Limbona v. Commission on Elections, supra note 11; citing Domino v. Commission on Elections, G.R. No. 134015, July 19, 1999, 310 SCRA 546, 568.

[19] 28 C.J.S. § 11.

[20] Tanseco v. Arteche, 57 Phil. 227, 235 (1932).

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