

SILVERIO R. TAGOLINO, PETITIONER, VS. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL AND LUCY MARIE TORRES- GOMEZ, RESPONDENTS.

G.R. No. 202202. March 19, 2013

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Assailed in this Petition for Certiorari and Prohibition under Rule 65 of the Rules of Court is the March 22, 2012 Decision[1] of the House of Representatives Electoral Tribunal (HRET) in HRET Case No. 10-031 (QW) which declared the validity of private respondent Lucy Marie Torres- Gomez's substitution as the Liberal Party's replacement candidate for the position of Leyte· Representative (Fourth Legislative District) in lieu of Richard Gomez.

The Facts

On November 30, 2009, Richard Gomez (Richard) filed his certificate of candidacy[2] (CoC) with the Commission on Elections (COMELEC), seeking congressional office as Representative for the Fourth Legislative District of Leyte under the ticket. of the Liberal Party. Subsequently, on December 6, 2009, one of the opposing candidates, Buenaventura Juntilla (Juntilla), filed a Verified Petition,[3] alleging that Richard, who was actually a resident of Colgate Street, East Greenhills, San Juan City, Metro Manila, misrepresented in his CoC that he resided in 910 Carlota Hills, Can-adieng, Ormoc City. In this regard, Juntilla asserted that Richard failed to meet the one (1) year residency requirement under Section 6, Article VI[4] of the 1987

Philippine Constitution (Constitution) and thus should be declared disqualified/ineligible to run for the said office. In addition, Juntilla prayed that Richard's CoC be denied due course and/or cancelled.[5]

On February 17, 2010, the COMELEC First Division rendered a Resolution[6] granting Juntilla's petition without any qualification. The dispositive portion of which reads:

WHEREFORE, premises considered, the Commission RESOLVED, as it hereby RESOLVES, to GRANT the Petition to Disqualify Candidate for Lack of Qualification filed by BUENAVENTURA O. JUNTILLA against RICHARD I. GOMEZ. Accordingly, RICHARD I. GOMEZ is DISQUALIFIED as a candidate for the Office of Congressman, Fourth District of Leyte, for lack of residency requirement.

SO ORDERED.

Aggrieved, Richard moved for reconsideration but the same was denied by the COMELEC En Banc through a Resolution dated May 4, 2010.[7] Thereafter, in a Manifestation of even date, Richard accepted the said resolution with finality "in order to enable his substitute to facilitate the filing of the necessary documents for substitution."[8]

On May 5, 2010, Lucy Marie Torres-Gomez (private respondent) filed her CoC[9] together with a Certificate of Nomination and Acceptance[10] from the Liberal Party endorsing her as the party's official substitute candidate

vice her husband, Richard, for the same congressional post. In response to various letter-requests submitted to the COMELEC's Law Department (Law Department), the COMELEC En Banc, in the exercise of its administrative functions, issued Resolution No. 8890[11] on May 8, 2010, approving, among others, the recommendation of the said department to allow the substitution of private respondent. The recommendation reads:

STUDY AND OBSERVATION

On the same date, this Department received an Opposition from Mr. Buenaventura O. Juntilla, thru his counsel, opposing the candidacy of Ms. Lucy Marie Torres Gomez, as a substitute candidate for Mr. Richard I. Gomez.

The crux of the opposition stemmed from the issue that there should be no substitution because there is no candidate to substitute for.

It must be stressed that the resolution of the First Division, this Commission, in SPA No. 09-059 speaks for disqualification of candidate Richard I. Gomez and not of cancellation of his Certificate of Candidacy:

'Wherefore, premises considered, the Commission RESOLVED, as it hereby RESOLVES, to GRANT the Petition to Disqualify Candidate for Lack of Qualification filed x· x x against RICHARD I. GOMEZ. Accordingly, RICHARD I. GOMEZ is DISQUALIFIED as a candidate for the Office of Congressman, Fourth District of Leyte, for lack of residency requirement.'

The said resolution was affirmed by the Commission En Banc on May 04, 2010.

The disqualification of a candidate does not automatically cancel one's certificate of candidacy, especially when it is nominated by a political party. In effect, the political party is still allowed to substitute the candidate whose candidacy was declared disqualified. After all, the right to substitute is a privilege given to a political party to exercise and not dependent totally to a candidate.

Nonetheless, in case of doubt, the same must always be resolved to the qualification of a candidate to run in the public office.

The substitution complied with the requirements provided under Section 12 in relation to Section 13 of Comelec Resolution No. 8678 dated October 6, 2009.

In view of the foregoing, the Law Department RECOMMENDS the following:

XXXX

2. TO. ALLOW CANDIDATE LUCY MARIE TORRES GOMEZ AS A SUBSTITUTE CANDIDATE FOR RICHARD GOMEZ; (Emphasis and underscoring supplied)

XXXX

The following day, or on Mar 9, 2010, Juntilla filed an Extremely Urgent Motion for Reconsideration[12] (May 9, 2010 Motion) of the above-mentioned COMELEC En Banc resolution.

Pending resolution of Juntilla's May 9, 2010 Motion, the national and local elections were conducted as scheduled on May 10, 2010. During the elections, Richard, whose name remained on the ballots, garnered 101,250 votes while his opponents, namely, Eufrocino Codilla, Jr. and herein petitioner Silverio Tagolino, obtained 76,549 and 493 votes, respectively.[13] In view of the aforementioned substitution, Richard's votes were credited in favor of private respondent and as a result, she was proclaimed the duly- elected Representative of the Fourth District of Leyte.

On May 11, 2010, Juntilla filed an Extremely Urgent Motion to resolve the pending May 9, 2010 Motion relative

to Resolution No. 8890. [14] The said motion, however, remained unacted.

On May 24, 2010, petitioner filed a Petition[15] for quo warranto before the HRET in order to oust private respondent from her congressional seat, claiming that: (1) she failed to comply with the one (1) year residency requirement under Section 6, Article VI of the Constitution considering that the transfer of her voter registration from San Rafael, Bulacan[16] to the Fourth District of Leyte was only applied for on July 23, 2009; (2) she did not validly substitute Richard as his CoC was void ab initio; and (3) private respondent's CoC was void due to her non-compliance with the prescribed notarial requirements i.e., she failed to present valid and competent proof of her identity before the notarizing officer.[17]

In her Verified Answer,[18] private respondent denied petitioner's allegations and claimed that she validly substituted her husband in the electoral process. She also averred that she was personally known to the notary public who notarized her CoC; one Atty. Edgardo Corden, and thus, she was not required to have presented any competent proof of identity during the notarization of the said document. Lastly, she asserted that despite her marriage to Richard and exercise of profession in Metro Manila, she continued to maintain her residency in Ormoc City which was the place where she was born and raised.

During the preliminary conference, and as shown in the Preliminary Conference Order dated September 2, 2010, the parties agreed on the following issues for resolution:

- Whether or not the instant petition for quo warranto is meritorious;
- Whether or not the substitution of respondent is valid;
- Whether or not a petition for quo warranto can be used as a substitute for failure to file the necessary petition for disqualification with the COMELEC;
- Whether or not respondent's CoC was duly subscribed; and
- Whether or not respondent is ineligible for the position of Representative of the Fourth District of Leyte for lack of residency requirement.[19]

Ruling of the HRET

After due proceedings, the HRET issued the assailed March 22, 2012 Decision[20] which dismissed the quo warranto petition and declared that private respondent was a qualified candidate for the position of Leyte Representative (Fourth Legislative District). It observed that the resolution denying Richard's candidacy i.e., the COMELEC First Divisions February 17, 2010 Resolution, spoke of disqualification and not of CoC cancellation. Hence, it held that the substitution of private respondent in lieu of Richard was legal and valid.[21] Also, it upheld the validity of private respondent's CoC due to petitioner's failure to controvert her claim that: she was personally known to the notary public who notarized her CoC.[22] Finally, the HRET ruled that while it had been admitted that private respondent resides in Colgate Street, San Juan City and lived in San Rafael, Bulacan, the fact was she continued to retain her domicile in Ormoc City given that her absence therefrom was only temporary.

Hence, the instant petition.

Issues Before the Court

The crux of the present controversy is whether or not the HRET gravely abused its discretion in finding that Richard was validly substituted by private respondent as candidate for Leyte Representative (Fourth Legislative District) in view of the former's failure to meet the one (1) year residency requirement provided under Section 6, Article VI of the Constitution.

It is petitioner's submission that the HRET gravely abused its discretion when it upheld the validity of private respondent's substitution despite contrary jurisprudence holding that substitution is impermissible where the substituted candidate's CoC was denied due course to and/or cancelled, as in the case of Richard. On the other hand, respondents maintain that Richard's CoC was not denied due course to and/or cancelled by the COMELEC as he was only "disqualified" and therefore, was properly substituted by private respondent.

Ruling of the Court

The petition is meritorious.

A. Distinction between a petition for disqualification and a petition to deny due course to/cancel a certificate of candidacy

The Omnibus Election Code[23] (OEC) provides for certain remedies to assail a candidate's bid for public office. Among these which obtain particular significance to this case are: (1) a petition for disqualification under Section 68; and (2) a petition to deny due course to and/or cancel a certificate of candidacy under Section 78. The distinctions between the two are well-perceived.

Primarily, a disqualification case under Section 68 of the OEC is hinged on either: (a) a candidate's possession of a permanent resident status in a foreign country;[24] or (b) his or her commission of certain acts of disqualification. Anent the latter, the prohibited acts under Section 68 refer to election offenses under the OEC, and not to violations of other penal laws.[25] In particular, these are: (1) giving money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (2) committing acts of terrorism to enhance one's candidacy; (3) spending in one's election campaign an amount in excess of that allowed by the OEC; (4) soliciting, receiving or making any contribution prohibited under Sections 89, 95, 96, 97 and 104 of the OEC; and (5) violating Sections 80,[26] 83,[27] 85[28] 86[29] and 261, paragraphs d,[30] e[31] k,[32] v,[33] and cc, sub-paragraph 6[34] of the OEC. Accordingly, the same provision (Section 68) states that any candidate who, in an action or protest in which he or she is a party, is declared by final decision of a competent court guilty of, or found by the COMELEC to have committed any of the foregoing acts shall be disqualified from continuing as a candidate for public office, or disallowed from holding the same, if he or she had already been elected.[35]

It must be stressed that one who is disqualified under Section 68 is still technically considered to have been a candidate, albeit proscribed to continue as such only because of supervening infractions which do not, however, deny his or her statutory eligibility. In other words, while the candidate's compliance with the eligibility requirements as prescribed by law, such as age, residency, and citizenship, is not in question, he or she is, however, ordered to discontinue such candidacy as a form of penal sanction brought about by the commission of the above-mentioned election offenses.

On the other hand, a denial of due course to and/or cancellation of a CoC proceeding under Section 78 of the OEC[36] is premised on a person's misrepresentation of any of the material qualifications required for the elective office aspired for. It is not enough that a person lacks the relevant qualification; he or she must have also made a false representation of the same in the CoC.[37] The nature of a Section 78 petition was discussed in the case of *Fermin v. COMELEC*,[38] where the Court illumined:

Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which may relate to the qualifications required of the public office he/she is running for. It is noted that the candidate states in his/her CoC that he/she is eligible for the office he/she seeks. Section 78 of the OEC, therefore, is to be read in

relation to the constitutional and statutory provisions on qualifications or eligibility for public office. If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate. Indeed, the Court has already likened a proceeding under Section 78 to a quo warranto proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a "Section 78" petition is filed before proclamation, while a petition for quo warranto is filed after proclamation of the winning candidate. (Emphasis supplied)

Corollary thereto, it must be noted that the deliberateness of the misrepresentation, much less one's intent to defraud, is of bare significance in a Section 78 petition as it is enough that the person's declaration of a material qualification in the CoC be false. In this relation, jurisprudence holds that an express finding that the person committed any deliberate misrepresentation is of little consequence in the determination of whether one's CoC should be deemed cancelled or not.[39] What remains material is that the petition essentially seeks to deny due course to and/or cancel the CoC on the basis of one's ineligibility and that the same be granted without any qualification.[40]

Pertinently, while a disqualified candidate under Section 68 is still considered to have been a candidate for all intents and purposes, on the other hand, a person whose CoC had been denied due course to and/or cancelled under Section 78 is deemed to have not been a candidate at all. The reason being is that a cancelled CoC is considered void ab initio and thus, cannot give rise to a valid candidacy and necessarily, to valid votes.[41] In *Talaga v. COMELEC*[42] (*Talaga*), the Court ruled that:

x x x While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, a person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all, as if he/she never filed a CoC.

The foregoing variance gains utmost importance to the present case considering its implications on candidate substitution.

B. Valid CoC as a condition sine qua non for candidate substitution

Section 77 of the OEC provides that if an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, a person belonging to and certified by the same political party may file a CoC to replace the candidate who died, withdraw or was disqualified. It states that:

Sec. 77. Candidates in case of death, disqualification or withdrawal of another. -If after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified. (Emphasis supplied)

Evidently, Section 77 requires that there be an "official candidate" before candidate substitution proceeds. Thus, whether the ground for substitution is death, withdrawal or disqualification of a candidate, the said section unequivocally states that only an official candidate of a registered or accredited party may be substituted.[43]

As defined under Section 79(a) of the OEC, the term "candidate" refers to any person aspiring for or seeking an elective public office who has filed a certificate of candidacy by himself or through an accredited political party, aggroupment, or coalition of parties. Clearly, the law requires that one must have validly filed a CoC in order to be considered a candidate. The requirement of having a CoC obtains even greater importance if one considers its nature. In particular, a CoC formalizes not only a person's public declaration to run for office but evidences as

well his or her statutory eligibility to be elected for the said post. In *Sinaca v. Mula*,^[44] the Court has illumined:

A certificate of candidacy is in the nature of a formal manifestation to the whole world of the candidate's political creed or lack of political creed. It is a statement of a person seeking to run for a public office certifying that he announces his candidacy for the_ office mentioned and that he is eligible for the office, the name of the political party to which he belongs, if he belongs to any, and his post-office address for all election purposes being as well stated. (Emphasis and underscoring supplied.)

In this regard, the CoC is the document which formally accords upon a person the status of a candidate. In other words, absent a valid CoC one is not considered a candidate under legal contemplation. As held in *Talaga*:^[45]

x x x a person's declaration of his intention to run for public office and his affirmation that he possesses the eligibility for the position he seeks to assume, followed by the timely filing of such declaration, constitute a valid CoC that render the person making the declaration a valid or official candidate. (Emphasis supplied)

Considering that Section 77 requires that there be a candidate in order for substitution to take place, as well as the precept that a person without a valid CoC is not considered as a candidate at all, it necessarily follows that if a person's CoC had been denied due course to and/or cancelled, he or she cannot be validly substituted in the electoral · process. The existence of a valid CoC is therefore a condition sine qua non for a disqualified candidate to be validly substituted.^[46]

C. Divergent effects of disqualification
and denial of due course to and/or
cancellation of CDC cases vis-a-vis
candidate substitution

Proceeding from the foregoing discourse, it is evident that there lies a clear-cut distinction between a disqualification case under Section 68 and denial of due course to and/or cancellation of COC case under Section 78 vis-a-vis their respective effects on candidate substitution under Section 77.

As explained in the case of *Miranda v. Abaya*^[47] (*Miranda*), a candidate who is disqualified under Section 68 can be validly substituted pursuant to Section 77 because he remains· a candidate until disqualified; but a person whose CoC has been denied due course to and/or cancelled under Section 78 cannot be substituted because he is not considered a candidate.^[48] Stated differently, since there would be no candidate to speak of under a denial of due course to and/or cancellation of a CoC case, then there would be no candidate to be substituted; the same does not obtain, however, in a disqualification case since there remains to be a candidate to be substituted, although his or her candidacy is discontinued.

On this note, it is equally revelatory that Section 77 expressly enumerates the instances where substitution is permissible, that is when an official candidate of a registered or accredited political party "dies, withdraws or is disqualified for any cause." Noticeably, material misrepresentation cases are not included in the said section and therefore, cannot be a valid basis to proceed with candidate substitution.

D. Application to the case at bar

In this case, it is undisputed that Richard was disqualified to run in the May 10, 2010 elections due to his failure to comply with the one year residency requirement.^[49] The confusion, however, stemmed from the use of the word "disqualified" in the February 17, 2010 Resolution of the COMELEC First Division, which was adopted by the COMELEC En Banc in granting substitution of private respondent, and even further perpetuated by the HRET in denying the quo warranto petition. In short, a finding that Richard was merely disqualified- and not that his CoC was denied due course to and/or cancelled -would mean that he could have been validly substituted by private

respondent, thereby legitimizing her candidacy.

Yet the fact that the COMELEC First Division's February 17, 2010 Resolution did not explicitly decree the denial of due course to and/or cancellation of Richard's CoC should not have obviated the COMELEC En Banc from declaring the invalidity of private respondent's substitution. It should be stressed that the clear and unequivocal basis for Richard's "disqualification" is his failure to comply with the residency requirement under Section 6, Article VI of the Constitution which is a ground for the denial of due course to and/or cancellation a CoC under Section 78 of the OEC, not . for disqualification.[50] As earlier mentioned, the material misrepresentation contemplated under a Section 78 petition refers to statements affecting one's qualifications for elective office such as age, residence and citizenship or non-possession of natural-born Filipino status.[51] There is therefore no legal basis to support a finding of disqualification within the ambit of election laws. Accordingly, given Richard's non-compliance with the one year residency requirement, it cannot be mistaken that the COMELEC First Division's unqualified grant of Juntilla's "Verified Petition to Disqualify Candidate for Lack of Qualification"[52] - which prayed that the COMELEC declare Richard "DISQUALIFIED and INELIGIBLE from seeking the office of Member of the House of Representatives" and "x x x that [his] Certificate of Candidacy x x x be DENIED DUE COURSE and/or CANCELLED"[53] - carried with it the denial of due course to and/or cancellation of Richard's CoC pursuant to Section 78.

Case law dictates that if a petition prays for the denial of due course to and/or cancellation of CoC and the same is granted by the COMELEC without any qualification, the cancellation of the candidate's CoC is in order. This is precisely the crux of the Miranda ruling wherein the Court, in upholding the COMELEC En Banc's nullification of the substitution in that case, decreed that the COMELEC Division's unqualified grant of the petition necessarily included the denial of due course to and/or cancellation of the candidate's CoC, notwithstanding the use of the term "disqualified" in the COMELEC Division's resolution, as the foregoing _was prayed for in the said petition:

The question to settle next is whether or not aside from Joel "Pempe" Miranda being disqualified by the COMELEC in its May 5, 1998 resolution, his certificate of candidacy had likewise been denied due course and cancelled.

The Court rules that it was.

Private respondent's petition in SPA No. 98-019 specifically prayed for the following:

WHEREFORE, it is respectfully prayed that the Certificate of Candidacy filed by respondent for the position of Mayor for the City of Santiago be not given due course and/or cancelled.

Other reliefs just and equitable in the premises are likewise prayed for.

In resolving the petition filed by private respondent specifying a very particular relief, the COMELEC ruled favorably in the following manner:

WHEREFORE, in view of the foregoing, the Commission (FIRST DIVISION) GRANTS the Petition. Respondent JOSE "Pempe" MIRANDA is hereby DISQUALIFIED from running for the position of mayor of Santiago City, Isabela, in the May 11, 1998 national and local elections.

SO ORDERED.

From a plain reading of the dispositive portion of the COMELEC resolution of May 5, 1998 in SPA No. 98-019, it is sufficiently clear that the prayer specifically and particularly sought in the petition was GRANTED, there being no qualification on the matter whatsoever. The disqualification was simply ruled over and above the granting of the specific prayer for denial of due course and cancellation of the certificate of candidacy.

X X X X

There is no dispute that the complaint or petition filed by private respondent in SPA No.98-0i9 is one to deny due course and to cancel the certificate of candidacy of Jose "Pempe" Miranda. There is likewise no question that the said petition was GRANTED without any qualification whatsoever. It is rather clear, therefore, that whether or not the COMELEC granted any further relief in SPA No. 98-019 by disqualifying the candidate, the fact remains that the said petition was granted and that the certificate of candidacy of Jose "Pempe" Miranda was denied due course and cancelled.(Emphasis and underscoring supplied)

The same rule was later discussed in the case of Talaga, viz:

3. Granting without any qualification of petition in SPA No. 09-029(DC) manifested COMELEC's intention to declare Ramon disqualified and to cancel his CoC

X X X X

In Miranda v. Abaya, the specific relief that the petition prayed for was that the CoC "be not given due course and/or cancelled". The COMELEC categorically granted "the petition" and then pronounced - in apparent contradiction - that Joel Pempe Miranda was "disqualified." The Court held that the COMELEC, by granting the petition without any qualification, disqualified Joel Pempe Miranda and at the same time cancelled Jose Pempe Miranda's CoC.

XXXX

The crucial' point of Miranda v. Abaya was that the COMELEC actually granted the particular relief of cancelling or denying due course to the CoC prayed for in the petition by not subjecting that relief to any qualification. (Emphasis and underscoring supplied)

In view of the foregoing rulings; the COMELEC En Banc direly misconstrued the COMELEC First Division's February 17, 2010 Resolution when it adopted the Law Department's finding that Richard was only "disqualified" and that his CoC was not denied due course to and/or cancelled, paving the way for the approval of private respondent's substitution. It overlooked the fact that the COMELEC First Division's ruling encompassed the cancellation of Richard's CoC and in consequence, disallowed the substitution of private respondent. It was therefore grave and serious error on the part of the COMELEC En Banc to have approved private respondent's substitution.

Consequently, in perpetuating the COMELEC En Banc's error as above-discussed, the HRET committed a grave abuse of discretion, warranting the grant of the instant petition.

Fundamental is the rule that grave. abuse of discretion arises when a lower court or tribunal patently violates the Constitution, the law or existing jurisprudence.[54] While it is well-recognized that the HRET has been empowered by the Constitution to be the "sole judge" of all contests relating to the election, returns, and qualifications of the members of the House, the Court maintains jurisdiction over it to check "whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction" on the part of the latter.[55] In other words, when the HRET utterly disregards the law and settled precedents on the matter before it, it commits a grave abuse of discretion.

Records clearly show that: (1) Richard was held ineligible as a congressional candidate for the Fourth District of Leyte due to his failure to comply with the one year residency requirement; (2) Juntilla's petition prayed for the denial of due course to and/or cancellation of his CoC; and (3) the COMELEC First Division granted the

foregoing petition without any qualification. By these undisputed and essential facts alone, the HRET should not have adopted the COMELEC En Banc 's erroneous finding that the COMELEC First Division's February 17, 2010 Resolution "speaks [only] of "disqualification and not of cancellation of [Richard's] CoC"[56] and thereby, sanctioned the substitution of private respondent.

Lest it be misunderstood, the HRET is not bound by previous COMELEC pronouncements relative to the qualifications of the Members of the House. Being the sole judge[57] of all contests relating to the election, returns, and qualifications of its respective members, the HRET cannot be tied down by COMELEC resolutions, else its constitutional mandate[58] be circumvented and rendered nugatory. Instructive on this point is the Court's disquisition in *Fernandez v. HRET*,[59] to wit:

Private respondent concludes from the above that petitioner had no legal basis to claim that the HRET, when reference to the qualification/s of Members of the House of Representatives is concerned, is "co-equal", to the COMELEC, such that the HRET cannot disregard any ruling of COMELEC respecting · the matter of eligibility and qualification of a member of the House of Representatives. The truth is the other way around, because the COMELEC is subservient to the HRET when the dispute or contest at issue refers to the eligibility and/or qualification of a Member of the House of Representatives. A petition for quo warranto is within the exclusive jurisdiction of the HRET as sole judge, and cannot be considered forum shopping even if another body may have passed upon in administrative or quasi-judicial proceeding the issue of the Member's qualification while the Member was still a candidate. There is forum-shopping only when two cases involve the same parties and the same cause of action. The two cases here are distinct and dissimilar in their nature and character. (Emphasis and underscoring supplied)

Notably, the phrase "election, returns, and qualifications" should be interpreted in its totality as referring to all matters affecting the validity of the contestee's title. More particularly, the term "qualifications" refers to matters that could be raised in a quo warranto proceeding against the pro- claimed winner, such as his disloyalty or ineligibility, or the inadequacy of his certificate of candidacy.[60] As used in Section 74 of the OEC, the word "eligible" means having the right to run for elective public office, that is, having all the qualifications and none of the ineligibilities to run for the public office.[61] In this relation, private respondent's own qualification to run for public office- which was inextricably linked to her husband's own qualifications due to her substitution - was the proper subject of quo warranto proceedings falling within the exclusive jurisdiction of the HRET and independent from any previous proceedings before the COMELEC, lest the jurisdictional divide between the two be blurred.

Nonetheless, it must be pointed out that the HRET's independence is not without limitation. As earlier mentioned, the Court retains certiorari jurisdiction over the HRET if only to check whether or not it has gravely abused its discretion. In this regard, the Court does not endeavor to denigrate nor undermine the HRET's independence; rather, it merely fulfills its duty to ensure that the Constitution and the laws are upheld through the exercise of its power of judicial review.

In fine, the Court observes· that the HRET wantonly disregarded the law by deliberately adopting the COMELEC En Banc's flawed findings regarding private respondent's eligibility to run for public office which essentially stemmed from her substitution. In this light, it cannot be gainsaid that the HRET gravely abused its discretion.

Owing to the lack of proper substitution .in this case, private respondent was therefore not a bona fide candidate for the position of Representative for the Fourth District of Leyte when she ran for office, which means that she could' not have been elected. Considering this pronouncement, there exists no cogent reason to further dwell on the other issues respecting private respondent's own qualification to office.

WHEREFORE, the petition is GRANTED. Accordingly the March 22, 2012 Decision rendered by the House of Representatives Electoral Tribunal in HRET Case No. 10-031 (QW) is hereby REVERSED and SET ASIDE.

SO ORDERED.

Sereno, C.J. Carpio, Villarama, Jr., Perez, Reyes, and Leonen, JJ., concur.
Velasco, Jr., Brion, and Bersamin, JJ., no part due to participation in HRET.
Leonardo-De Castro, J., please see dissenting opinion.
Peralta, J., no part incumbent member HRET.
Del Castillo, and Mendoza, JJ., join the dissent of J. Abad.
Abad, J., see dissenting opinion.

[1] Rollo, pp. 48-65. Signed by Supreme Court Associate Justices Presbitero J. Velasco, Jr., Diosdado M. Peralta, and Lucas P. Bersamin, Representatives Franklin P. Bautista, Joselito Andrew R. Mendoza; Justin Marc SB. Chipeco, Rufus B. Rodriguez (dissented), and Ma. Theresa B. Bonoan-David (abstained).

[2] Id. at 257.

[3] Id. at 246-253.

[4] Sec. 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election. (Emphasis supplied)

[5] Rollo, pp. 252-253.

[6] Id. at 259-265. Signed by Presiding Commissioner Rene V. Sarmiento, Commissioners Armando C. Velasco and Gregorio Y. Larrazabal (no part).

[7] Id. at 266-277. Penned by Commissioner Elias R. Yusoph, with Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Nicodemo T. Ferrer, and Annando C. Velasco, concurring, Commissioners Jose A. R. Melo and Gregorio Y. Larrazabat, no part.

[8] Id. at 278-280.

[9] Id. at 297.

[10] Id. at 298.

[11] Id. at 132-139.

[12] Id. at 311-326.

[13] Id. at 98.

[14] See *Torres-Gomez v. Codilla*, G.R. No. 195191, March 20, 2012, 668 SCRA 600.

[15] Rollo, pp. 85-93.

[16] Registered in Precinct No. 0004A of San Rafael, Bulacan.

[17] Rollo, pp. 87-92.

[18] Id. at 102-119.

[19] Id. at 54-55.

[20] Id. at 48-65.

[21] Id. at 56.

[22] Id. at 58-59.

[23] BATAS PAMBANSA SILANG NO. 881, AS AMENDED.

[24] The exception to this is when the said status is waived.

Sec. 68 of the OEC partly provides:

Sec. 68. Disqualifications. - x x x x Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

[25] Aratea v. COMELEC, GR. No. 195229, October 9, 2012.

[26] Refers to election campaign or political activity outside the campaign period.

[27] Refers to the removal, destruction or defacement of lawful election propaganda.

[28] Refers to certain forms of election propaganda.

[29] Refers to violation of rules and regulations on election propaganda through mass media.

[30] Refers to coercion of subordinates.

[31] Refers to threats, intimidation, terrorism, use of fraudulent device or other forms of coercion.

[32] Refers to unlawful electioneering.

[33] Refers to the release disbursement or expenditure of public funds.

[34] Refers to the solicitation of votes or undertaking any-propaganda on the day of the election.

[35] See BATAS PAMBANSA BILANG NO. 881 , AS AMENDED, Section 68.

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

[37] Talaga v. COMELEC, G.R. Nos. 196804 and 197015, October 9, 2012, citing Fermin v. COMELEC, GR. No. 179695, December 18, 2008, 574 SCRA 782.

[38] Fermin v. COMELEC, id.

[39] See Miranda v. Abaya, 370 Phil 642.

[40] Id.

[41] Supra note 25, citing Bautista v. COMELEC, 359 Phil. I , 16 (1998).

[42] Supra note 37.

[43] Id.

[44] 373 Phil 896, 908, citing Ruperto G. Marting, The Revised Election Code with Annotations 41 (First Edition).

[45] Supra note 37.

[46] Supra notes 25 and 37.

[47] Supra note 39.

[48] Id.

[49] Rollo, p. 264.

[50] Fermin v. COMELEC, supra note 37.

[51] Gonzalez v. COMELEC, G.R. No. 192856, March 8, 2011, 644 SCRA 761, 775-776.

[52] Rollo, p. 246.

[53] Id. at 252-253; emphasis and underscoring supplied.

[54] See Fernandez v. COMELEC, G.R. No. 171821, October 9, 2006, 504 SCRA 116.

[55] See Bengson III v. HRET, 409 Phil. 633 (2001); citations omitted.

[56] Rollo, p. 133.

[57] In the case of Lazatin v. HRET, 250 Phil. 390, 399-400 (1988), the Court stated that under the 1987 Philippine Constitution, the jurisdiction of the Electoral Tribunal is original and exclusive, viz:

The use of the word "sole" emphasizes the exclusive character of the jurisdiction conferred. The exercise of power by the Electoral Commission under the 1935 Constitution has been described as "intended to be as complete and unimpaired as if it had originally remained in the legislature." Earlier this grant of power to the legislature was characterized by Justice Malcolm as "full, clear and complete; Under the amended 1935 Constitution, the power was unqualifiedly reposed upon the Electoral Tribunal and it remained as full, clear and complete as that previously granted the Legislature and the Electoral Commission. The same may be said with regard to the jurisdiction of the Electoral Tribunal under the 1987 Constitution. (Emphasis supplied; citations omitted)

[58] Art. 6, Sec. 17 of the Constitution states:

Sec. 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. (Emphasis supplied)

[59] G.R. No. 187478, December 21, 2009, 608 SCRA 733, 747-748.

[60] See Liwayway Vinzons-Chato v. COMELEC, G.R. No. 172131, April 2, 2007, 520 SCRA 166.

[61] Supra note 25, citing the Oxford Dictionary of English (Oxford University Press 2010).

DISSENTING OPINION

LEONARDO-DE CASTRO, J.:

I vote to deny the petition of Silverio R. Tagolino on the ground that after the lapse of the reglementary period of ten (10) days from the date of proclamation of respondent Lucy Marie Torres-Gomez as the duly elected Representative of the Fourth Legislative District of Leyte, the said proclamation can no longer be assailed by an election protest or a petition for quo warranto. Moreover, the substitution by said respondent of her husband Richard Gomez cannot be questioned, there being no factual basis to assail the decision of the Commission on Elections (COMELEC) not to cancel the certificate of candidacy of respondent's husband.

The Petition for Quo Warranto was filed out of time.

Respondent Gomez was proclaimed as the winning candidate for the position of Member of the House of Representatives on May 12, 2010 whereas the Petition for Quo Warranto was filed by petitioner Tagolino on May 24, 2010, or twelve days after the proclamation of respondent Gomez.

The pertinent provisions of the Rules of the House of Representatives Electoral Tribunal (HRET) provide as follows:

RULE 16. Election Protest. - A verified petition contesting the election or returns of any Member of the House of Representatives shall be filed by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten (10) days after the proclamation of the winner. The party filing the protest shall be designated as the protestant while the adverse party shall be known as the protestee.

No joint election protest shall be admitted, but the Tribunal, for good and sufficient reasons, may consolidate individual protests and hear and decide them jointly.

The protest is verified by an affidavit that the affiant has read it and that the allegations therein are true and correct of his knowledge and belief. A verification based on "information and belief," or upon "knowledge, information and belief," is not a sufficient verification.

An unverified election protest shall not suspend the running of the reglementary period to file the protest.

RULE 17. Quo Warranto. - A verified petition for quo warranto contesting the election of a Member of the House of Representatives on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall be filed by any voter within ten (10) days after the proclamation of the winner. The party filing the petition shall be designated as the petitioner while the adverse party shall be known as the respondent.

The rule on verification provided in Section 16 hereof shall apply to petitions for quo warranto.

As correctly asserted by respondent Gomez in her Verified Answer filed before the HRET, the Petition for Quo Warranto should have been dismissed outright pursuant to Rule 21 of the Rules of the HRET, quoted below:

RULE 21. Summary Dismissal of Election Contest. - An election protest or petition for quo warranto may be summarily dismissed by the Tribunal without the necessity of requiring the protestee or respondent to answer if, inter alia: x x x

(2) The petition is filed beyond the period provided in Rules 16 and 17 of these Rules[.]

This Court has emphasized the importance of compliance with the HRET Rules prescribing reglementary periods to be observed by the parties in an election contest to expedite the disposition of election controversies so as not to frustrate the will of the electorate. In *Hofer v. House of Representatives Electoral Tribunal*,^[1] the Court sustained the dismissal by the HRET of the election protest for failure to comply strictly with the period prescribed by the

HRET Rules.

Similarly, *Perez v. Commission on Elections*[2] held that remedies are unavailing once the prescriptive period to bring the appropriate petition has set in. The pertinent ruling of the Court in *Perez* is quoted as follows:

Petitioner's remedies should have been (1) to reiterate her prayer in the petition for disqualification, and move for the issuance of an order by the COMELEC suspending the proclamation of private respondent pending the hearing of the said petition and, in the event the motion was denied before the proclamation of private respondent, file a petition for certiorari in this Court with a prayer for a restraining order to enjoin the proclamation of private respondent; or (2) to file a petition for quo warranto in the House of Representatives Electoral Tribunal within ten (10) days after the proclamation of private respondent as Representative- elect on May 16, 1998. Obviously, neither of these remedies can be availed of now.[3]

The HRET and this Court cannot set aside at will the HRET Rules mandating the timely filing of election contests. Otherwise, a dangerous precedent will be set that will cause uncertainty in the application of the HRET Rules and instability in the holding of an elective post by a proclaimed winning candidate that may adversely affect public service.

In view of the foregoing, I submit that the HRET is bereft of jurisdiction to entertain the Petition for Quo Warranto filed by Tagolino, after the lapse of the reglementary period prescribed by its own Rules. The proclamation of respondent Gomez has become incontrovertible or unassailable after the expiration of ten (10) days from its date.

No factual basis to cancel the certificate of candidacy.

The lack of jurisdiction on the part of the HRET to entertain the untimely Petition for Quo Warranto assailing the proclamation of private respondent Gomez would suffice to dismiss outright the instant petition. Moreover, the substantive issue extensively discussed in the ponencia of the Honorable Associate Justice Estela Perlas Bernabe, particularly as to the "divergent effects of disqualification and denial of due course to and/or cancellation of COC (Certificate of Candidacy) cases vis-a-vis candidate substitution" is inappropriate.

Firstly, the certificate of candidacy of Richard Gomez, the husband of respondent Gomez, was not cancelled by the COMELEC.

Secondly, the decision by the COMELEC not to cancel said certificate of candidacy was proper as the COMELEC did not reach any finding that Richard Gomez deliberately committed a misrepresentation, which is a requisite for the cancellation of a certificate of candidacy under Section 78 of the Omnibus Election Code. In *Mitra v. Commission on Elections*,[4] the Court ruled:

Section 74, in relation to Section 78, of the Omnibus Election Code (OEC) governs the cancellation of, and grant or denial of due course to, COCs. The combined application of these sections requires that the candidate's stated facts in the COC be true, under pain of the COC's denial or cancellation if any false representation of a material fact is made.

x x x

The false representation that these provisions mention must necessarily pertain to a material fact. The critical material facts are those that refer to a candidate's qualifications for elective office, such as his or her citizenship and residence. The candidate's status as a registered voter in the political unit where he or she is a candidate similarly falls under this classification as it is a requirement that, by law (the Local Government Code), must be reflected in the COC. The reason for this is obvious: the candidate, if he or she wins, will work for and represent the political unit where he or she ran as a candidate.

The false representation under Section 78 must likewise be a "deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible." Given the purpose of the requirement, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office. Thus, the misrepresentation that Section 78 addresses cannot be the result of a mere innocuous mistake, and cannot exist in a situation where the intent to deceive is patently absent, or where no deception on the electorate results. The deliberate character of the misrepresentation necessarily follows from a consideration of the consequences of any material falsity: a candidate who falsifies a material fact cannot run; if he runs and is elected, he cannot serve; in both cases, he can be prosecuted for violation of the election laws.

Based on these standards, we find that Mitra did not commit any deliberate material misrepresentation in his COC. 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. The COMELEC, too, 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. (Emphases supplied and citations omitted.)

The ponencia of Justice Bernabe indulged in the legal fiction that the certificate of candidacy of Richard Gomez was cancelled when it in fact was not. Neither can the Court now on its own decree such cancellation in the absence of any factual basis or evidentiary support for a finding that Richard Gomez committed a "deliberate attempt to mislead, misinform, or hide a fact that would otherwise render [him] ineligible."

Substitution was valid.

Since the COMELEC did not cancel the certificate of candidacy of Richard Gomez but only disqualified him from running in the elections, the substitution by respondent Gomez of Richard Gomez squarely falls within the ambit of Section 77 of the Omnibus Election Code (OEC), which uses the broad language "disqualification for any cause," as follows:

Section 77. Candidates in case of death, disqualification or withdrawal of another. - If after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified. The substitute candidate nominated by the political party concerned may file his certificate of candidacy for the office affected in accordance with the preceding sections not later than mid-day of the day of the election. If the death, withdrawal or disqualification should occur between the day before the election and mid-day of election day, said certificate may be filed with any board of election inspectors in the political subdivision where he is a candidate, or, in the case of candidates to be voted for by the entire electorate of the country, with the Commission.

Petition for Quo Warranto lacked factual basis.

Regarding the issue of whether a Petition for Quo Warranto is a proper legal remedy to assail the validity of the substitution of a candidate under Section 77 of the OEC, it suffices here to state that, under Rule 17 of the HRET Rules, the grounds for a Petition for Quo Warranto are ineligibility to run for a public office or disloyalty to the Republic of the Philippines.

Pertinently, Section 6, Article VI of the Constitution, which provides for the qualifications of a Member of the House of Representatives, states as follows:

Section 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election.

The above-quoted provision refers to the personal attributes of a candidate. The ponencia did not find any of the above qualifications absent in the case of respondent Gomez. However, the ponencia attributed the ineligibility of respondent Gomez to its erroneous assumption that the certificate of candidacy of Richard Gomez, whom she substituted, should have been cancelled. As explained above, the COMELEC correctly did not so cancel said certificate, it having found no factual basis to do so. This being the case and the fact that the Petition for Quo Warranto was filed out of time, there is no need to dwell on the issue of whether the Petition for Quo Warranto may validly question the validity of the substitution of a candidate and to discuss the constitutional boundaries of the respective jurisdictions of the COMELEC and the HRET.

In view of the foregoing, I reiterate my vote to dismiss the Petition for Certiorari filed by Tagolino.

[1] G.R. No. 158833, May 12, 2004, 428 SCRA 383, 386-387.

[2] 375 Phil. 1106 (1999).

[3] Id. at 1116.

[4] G.R. No. 191938, July 2, 2010, 622 SCRA 744, 768-770.

DISSENTING OPINION

ABAD, J.:

On November 30, 2009 Richard Gomez (Richard) filed his certificate of candidacy (CoC) for Congressman of Leyte's 4th District under the Liberal Party (LP) in the May 10, 2010 elections. He gave his residence as 910 Carlota Hills, Barangay Can-Adieng, Ormoc City. After a week, Buena Ventura O. Juntilla, a registered voter of the district, filed a Verified Petition to Disqualify Candidate for Lack of Qualification^[1] before the Commission on Elections (COMELEC) in SPA 09-059 (DC) on the ground that Richard was not an Ormoc City resident. Juntilla asked the COMELEC two things: a) disqualify Richard and b) deny due course to or cancel his CoC for material misrepresentation regarding his residence since he in fact resided in Greenhills, Mandaluyong City.

On February 17, 2010 the COMELEC First Division issued a resolution disqualifying Richard for failing to present "sufficient proof that would establish his ties to Ormoc." The resolution failed, however, to order the denial of due course or cancellation of his CoC. The dispositive portion of the resolution reads:

WHEREFORE, premises considered, the Commission RESOLVED, as it hereby RESOLVES, to GRANT the Petition to Disqualify Candidate for Lack of Qualification filed by BUENAVENTURA O. JUNTILLA against RICHARD I. GOMEZ. Accordingly, RICHARD I. GOMEZ is DISQUALIFIED as a candidate for the Office of Congressman, Fourth District of Leyte, for lack of residency requirement.^[2] (Emphasis supplied.)

On February 20, 2010 Richard moved for reconsideration of the above resolution. Juntilla, on the other hand, did not file a similar motion even when the COMELEC failed to grant his other prayer for denial of due course or cancellation of Richard's CoC.

On May 4, 2010 the COMELEC En Banc issued a Resolution^[3] dismissing Richard's motion for reconsideration. On the same day, Richard filed with the COMELEC a Manifestation^[4] informing it of his acceptance of its decision in his case to enable a substitute to take his place. Acting on the Manifestation, the COMELEC En Banc issued an Order on May 5 declaring its May 4 Resolution final and executory.

On May 5, 2010 the LP Secretary-General wrote the Provincial Election Supervisor of Leyte, nominating

respondent Lucy Gomez as a substitute candidate for her husband, Richard. Lucy Gomez promptly filed her CoC with COMELEC as substitute candidate. On the same date, Juntilla filed with the COMELEC a Counter-Manifestation,[5] followed by a letter to the COMELEC Law Department, opposing Lucy Gomez's substitution of her husband, claiming that the substitution was invalid since she had no one to substitute in view of the COMELEC's disqualification of Richard by final order.

On May 8, 2010, the COMELEC En Banc issued Resolution 88906 approving and adopting, among other things, its Law Department's study and recommendation that Lucy Gomez be allowed to substitute for Richard, given that the 1[st] Divisions ruling which did not cancel Richard's CoC but merely "disqualified" him, had already become final and executory. The pertinent portion of the study and recommendation that the En Banc adopted states:

The crux of the opposition stemmed from the issue that there should be no substitution because there is no candidate to substitute for.

It must be stressed that the resolution of the First Division, this Commission, in SPA No. 09-059 speaks of disqualification of candidate Richard I. Gomez and not of cancellation of his Certificate of Candidacy:

"Wherefore, premises considered, the Commission RESOLVED, as it hereby RESOLVES, to GRANT the Petition to Disqualify Candidate for Lack of Qualification filed against RICHARD I. GOMEZ. Accordingly, RICHARD I. GOMEZ is DISQUALIFIED as a candidate for the Office of Congressman, Fourth District of Leyte, for lack of residency requirement."

The said resolution was affirmed by the Commission En Banc on May 4, 2010.

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In view of the foregoing, the Law Department RECOMMENDS

the following:

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2. TO ALLOW CANDIDATE LUCY MARIE TORRES GOMEZ AS A SUBSTITUTE CANDIDATE FOR RICHARD GOMEZ; (Emphasis supplied)

On the same day the COMELEC En Banc issued its May 8, 2010 resolution allowing the substitution, Juntilla filed an Extremely Urgent Motion for Reconsideration[7] of the same but the motion remained unacted upon, obviously owing to the supervening May 10 elections. Juntilla never elevated or questioned the matter before the Supreme Court.

On May 12, 2010 the Leyte Provincial Board of Canvassers proclaimed Lucy Gomez as Congresswoman-elect to represent the 4[th] District of Leyte, having obtained 101,250 votes. Petitioner Silvestre R. Tagolino and another candidate, Eufrocino C. Codilla, Jr., garnered 493 votes and 76,549 votes, respectively.

In due time, Tagolino brought a quo warranto action[8] against Lucy Gomez with the House of Representatives Electoral Tribunal (HRET) pursuant to its Rule 17 which allows the filing of a petition for quo warranto contesting the election of a member of the House of Representatives "on the ground of ineligibility or disloyalty to the Republic." Juntilla did not join Tagolino in this action.

Tagolino alleged in his petition (1) that . Lucy Gomez was not a resident of Ormoc City at least one year immediately preceding the election; (2) that she was not a registered voter in the 4th District of Leyte; and (3) that her CoC was void for failing to comply with the requirements of Section 2 of the 2004 Notarial Law.⁹ Tagolino did not raise in his petition the question of the validity of Lucy Gomez's substitution of her husband Richard.

In her Answer,[10] Lucy Gomez averred: (a) that the petition was filed beyond 10 days from proclamation; (b) that the petition assails the validity of her CoC, which is outside the jurisdiction of the HRET and should have been assailed before the COMELEC through a petition to deny due course to or cancel her CoC; (c) that the COMELEC had already resolved her substitution of Richard with finality in its Resolution 8890; (d) that she did not have to present proof of her identity when her CoC was notarized the notary public personally knew her; and (e) she never abandoned her domicile in Ormoc City despite her change of residence and transfer of voting registration to San Rafael, Bulacan, arising from her marriage to Richard.

On March 22, 2010 the HRET rendered a Decision[11] dismissing the quo warranto petition and declaring Lucy Gomez a qualified candidate during the May 2010 election for the subject position, her substitution of her disqualified husband being valid and legal. HRET ruled that Lucy Gomez's domicile continued to be Ormoc City despite her marriage to Richard. Tagolino moved for reconsideration but HRET denied the same on May 28, 2012, hence, this petition.

Question Presented

As the ponencia would have it, the issue boils down to the question of whether or not Lucy Gomez validly substituted Richard whom the COMELEC declared disqualified for lack of residency.

But the above is not an accurate statement of the real issue in this case. The real issue in this case is whether or not the HRET can review and reverse a COMELEC Decision involving a member of the House of Representatives that had become final and executory.

Discussion

The election of Lucy Gomez as Congresswoman of the 4th District of Leyte was preceded by two separate incidents before the COMELEC:

The first incident involved Richard. It consists in Juntilla's self-titled Verified Petition to Disqualify Candidate for Lack of Qualification Juntilla asked for Richard's disqualification, consistent with the substance of his petition, but added in his prayer that the candidate's CoC be also cancelled or denied due course. The COMELEC First Division granted the petition and disqualified Richard but did not cancel or deny due course to his CoC.

The second incident involved Lucy Gomez. Juntilla opposed her substitution of Richard on the ground that the substitution was invalid since she had no one to substitute in view of the COMELEC First Division's disqualification of Richard by final order. But the COMELEC En Banc denied the opposition and allowed the substitution, given that the First Division's resolution, which merely disqualified Richard, had already become final and executory.

The key issue in this case is actually whether or not the HRET was correct in ruling that the COMELEC First Division's February 17, 2010 Resolution that disqualified Richard but did not cancel his CoC or deny it due course had already become final and executory. For, if it had indeed become final and executory, that resolution would, as the COMELEC En Banc held in its May 8, 2010 Resolution, provide legal basis for Lucy Gomez's substitution of Richard.

It is clear from the facts that the COMELEC First Division's February 17, 2010 Resolution, which merely disqualified Richard but did not cancel or deny due course to his CoC, became final and executory. That resolution may be in error, as the ponencia would have it, but it certainly became final and executory for the following reasons:

First. Juntilla never filed a motion for reconsideration of that resolution. Consequently, he could not help its

becoming final and executory as to him.

Second. Only Richard filed a motion for reconsideration of the COMELEC First Division's February 17, 2010 Resolution, which merely disqualified him. When the COMELEC En Banc dismissed that motion for reconsideration on May 4, 2010, Richard filed a manifestation on the same day, accepting its validity. On May 5 the COMELEC En Banc declared its May 4, 2010 Resolution final and executory. Consequently, what remained the last window of opportunity to review and possibly reverse the COMELEC First Division's February 17, 2010 Resolution closed down.

Third. Juntilla attempted to revive the issue concerning the COMELEC First Division's February 17, 2010 Resolution when he opposed Lucy Gomez's substitution of Richard. He claimed that the First Division's resolution resulted in the COMELEC denying due course to Richard's CoC with the effect that, without a valid one, he could not be substituted. But Juntilla is clearly in error since the COMELEC En Banc already declared on May 5 that the First Division's February 17 Resolution merely ordered Richard's disqualification and such resolution had irreversibly become final and executory.

Juntilla of course filed on May 8, 2010 a motion for reconsideration of the COMELEC En Banc's Resolution of the same date that allowed Lucy Gomez's substitution of Richard, but the motion remained unacted upon, obviously owing to the supervening May 10, 2010 elections. At any rate, Juntilla may be deemed to have abandoned that motion for reconsideration for he never insisted that it be resolved. And he never raised before this Court the issue of the validity of that COMELEC En Banc's May 8 Resolution that allowed the substitution. Unchallenged, that resolution became final and executory as well.

The Court has of course ruled In *Guerrero v. Commission on Elections*[12] that, since the Constitution makes the HRET "the sole judge of all contests relating to the election, returns and qualifications" of its members, it has the jurisdiction to pass upon the validity of substitution involving such members. Said the Court:

Whether respondent [Rodolfo] Fariñas validly substituted Chevylle V. Fariñas and whether respondent became a legitimate candidate, in our view, must likewise be addressed to the sound judgment of the Electoral Tribunal. Only thus can we demonstrate fealty to the Constitutional provision that the Electoral Tribunal of each House of Congress shall be the "sole judge of all contests relating to the election, returns and qualifications of their respective members." [13] (Emphasis supplied)

But the above ruling should be understood in the context of the facts of the Fariñas case. Guillermo Ruiz, a registered voter, filed a petition with the COMELEC's Second Division seeking the perpetual disqualification of Rodolfo Fariñas as candidate for Congressman for the May 11, 1998 elections on the ground that he had been campaigning for that position despite his failure to file a CoC. Eventually, Fariñas filed his CoC on May 8, 1998 in substitution of Chevylle Fariñas who withdrew earlier on April 3. Because of this supervening event, on May 10 the Second Division dismissed Ruiz's petition for lack of merit.

Fariñas won the elections and was promptly proclaimed. On May 16, 1998, however, Ruiz filed a motion for reconsideration of the Second Division's May 10 Resolution, contending that Fariñas could not validly substitute for Chevylle, since the latter was not the official candidate of the *Lakas ng Makabayan Masang Pilipino* but was an independent candidate. Meantime, on June 3, 1998 Fariñas took his oath as member of the House of Representatives.

On June 10, 1998 petitioner Arnold Guerrero, a rival candidate, filed a petition-in-intervention with the COMELEC, assailing Fariñas' substitution of Chevylle. On January 6, 1999, the COMELEC En Banc dismissed Ruiz's motion for reconsideration and Guerrero's petition-in-intervention for lack of jurisdiction since Fariñas had in the meantime assumed office.

Upon Guerrero's petition, this Court held that while the COMELEC has the power to declare a CoC valid or invalid, its refusal to exercise that power, following Farifias' proclamation and assumption of office, simply recognized the jurisdictional boundaries between the COMELEC and the HRET. The Court said that whether Fariñas validly substituted Chevylle must now be addressed to the sound judgment of the HRET. The COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins.

Tagolino cannot invoke the Fariñas ruling for three reasons:

First, the Court's thesis in Fariñas is that the HRET can take over a pending matter before the COMELEC since the latter may be considered ousted of its jurisdiction over the same upon the winner's assumption of office. The HRET takes over the authority to resolve such pending matter.

Here, however, the key issue of whether or not the COMELEC First Division's February 17, 2010 Resolution, which merely disqualified Richard but did not cancel his CoC, is no longer a pending matter. It became final and executory since, as pointed out above, Juntilla did not file a motion for its reconsideration and the COMELEC En Banc had found it to be the case.

Second, Guerrero had the right to raise the issue of Fariñas' disqualification before the HRET since he intervened and joined cause with Guillermo in his action before the COMELEC. This gave Guerrero a stake in the resolution of Guillermo's motion for reconsideration after the COMELEC declined to further act on the same.

Here, Tagolino never intervened in Juntilla's actions before the COMELEC. He stayed out of it. Consequently, he has no right to ask the HRET to resolve Juntilla's May 8, 2010 motion for reconsideration of the COMELEC En Banc's order of the same date. The right to press for the resolution of that May 8 motion for reconsideration belonged to Juntilla who alone filed it. But, as it happened, he abandoned his motion when he did not come up either to the Supreme Court or to the HRET to cause it to be resolved.

And third, Tagolino is barred from claiming that, in disqualifying Richard, the COMELEC's First Division in effect caused the cancellation of his CoC. Tagolino made a binding admission during the Preliminary Conference before the HRET that the COMELEC did not in fact order such cancellation of Richard's CoC.¹⁴ Thus, Tagolino admitted that:

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3. By Resolution of February 17, 2010, the Comelec disqualified Richard I. Gomez as candidate: for Representative of the Fourth District of Leyte for lack of residency;

4. Gomez filed a motion for reconsideration, which the Comelec En Banc dismissed for lack of merit by Resolution of May 4, 2010;

5. Said May 4, 2010 Resolution of the Comelec did not order the cancellation of Gomez' certificate of candidacy; (Emphasis supplied)

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Tagolino's admission in paragraph 5 above—that the COMELEC did not order the cancellation of Richard Gomez's certificate of candidacy—is binding on him, especially since he makes no allegation that he made such admission through palpable mistake.^[15]

True, the parties raised before the HRET the issue of "whether the substitution of respondent is valid." But this merely accords with Lucy Gomez's defense in her answer that the COMELEC had already resolved her

substitution of Richard with finality in its Resolution 8890. It did not mean that the parties were submitting to the HRET for resolution the issue of the final and executory nature of the COMELEC First Division's resolution that enabled her to substitute for Richard.

So the Court comes to the real issue in this case: whether or not the HRET can review and reverse a COMELEC decision, involving a member of the House of Representatives, that had already become final and executory.

The HRET has no authority to review final and executory resolutions or decisions of the COMELEC that it rendered pursuant to its powers under the Constitution, no matter if such resolutions or decisions are erroneous. The parties cannot by agreement confer such authority on HRET. Neither the HRET nor the Court can set aside the COMELEC's final and executory resolutions that paved the way for Lucy Gomez to substitute her husband.

As for Lucy Gomez's residency qualification, the evidence presented in the case amply supports HRET's conclusion that she met such qualification.

For all of the above reasons, I vote to deny the petition.

[1] Rollo, pp. 246-253.

[2] Id. at 259-265.

[3] Id. at 266-277.

[4] Id. at 278-279.

[5] Id. at 281-86.

[6] Id. at 303-310.

[7] Id. at 311-324.

[8] Id. at 85-92.

[9] SEC. 2. Affirmation or Oath. - The term "Affirmation" or "Oath" refers to an act in which an individual on a single occasion:

(a) appears in person before the notary public;

(b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; x x x

[10] Rollo, pp. 23-39.

[11] Annex "A," Petition, id. at 48-64.

[12] 391 Phil. 344 (2000).

[13] Id at 354.

[14] HRET Records, Vol. I, p. 504

[15] Section 4, Rule 139, Rules of Evidence. Judicial admissions.- An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. (2a)

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