

RAMON L. LABO, JR., PETITIONER, VS. THE COMMISSION ON ELECTIONS (COMELEC) EN BANC AND LUIS L. LARDIZABAL, RESPONDENTS.

G.R. No. 86564. August 01, 1989

Ponente: CRUZ, J.

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CRUZ, J.:

The petitioner asks this Court to restrain the Commission on Elections from looking into the question of his citizenship as a qualification for his office as Mayor of Baguio City. The allegation that he is a foreigner, he says, is not the issue. The issue is whether or not the public respondent has jurisdiction to conduct any inquiry into this matter, considering that the petition for quo warranto against him was not filed on time.

It is noteworthy that this argument is based on the alleged tardiness not of the petition itself but of the payment of the filing fee, which the petitioner contends was an indispensable requirement. The fee is, curiously enough, all of P300.00 only. This brings to mind the popular verse that for want of a horse the kingdom was lost. Still, if it is shown that the petition was indeed filed beyond the reglementary period, there is no question that this petition must be granted and the challenge abated.

The petitioner's position is simple. He was proclaimed mayor-elect of Baguio City on January 20, 1988. The petition for quo warranto was filed by the private respondent on January 26, 1988, but no filing fee was paid on that date. This fee was finally paid on February 10, 1988, or twenty-one days after his proclamation. As the petition by itself alone was ineffectual without the filing fee, it should be deemed filed only when the fee was paid. This was done beyond the reglementary period provided for under Section 253 of the Omnibus Election Code reading as follows:

SEC. 253. Petition for quo warranto. -Any voter contesting the election of a Member of the Batasang Pambansa, regional, provincial, or city officer on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall file a sworn petition for quo warranto with the Commission within ten days after the proclamation of the result of the election.

The petitioner adds that the payment of the filing fee is required under Rule 36, Section 5 of the Procedural Rules of the COMELEC providing that -

Sec. 5. No petition for quo warranto shall be given due course without the payment of a filing fee in the amount of Three Hundred Pesos (P300.00) and the legal research fee as required by law.

and stresses that there is abundant jurisprudence holding that the payment of the filing fee is essential to the timeliness of the filing of the petition itself. He cites many rulings of the Court to this effect, specifically *Manchester v. Court of Appeals*.^[1]

For his part, the private respondent denies that the filing fee was paid out of time. In fact, he says, it was filed ahead of time. His point is that when he filed his "Petition for Quo Warranto with Prayer for Immediate

Annulment of Proclamation and Restraining Order or Injunction" on January 26, 1988, the COMELEC treated it as a pre-proclamation controversy and docketed it as SPC Case No. 88-288. No docket fee was collected although it was offered. It was only on February 8, 1988, that the COMELEC decided to treat his petition as solely for quo warranto and re-docketed it as EPC Case No. 88-19, serving him notice on February 10, 1988. He immediately paid the filing fee on that date.

The private respondent argues further that during the period when the COMELEC regarded his petition as a pre-proclamation controversy, the time for filing an election, protest or quo warranto proceeding was deemed suspended under Section 248 of the Omnibus Election Code.[2] At any rate, he says, Rule 36, Section 5, of the COMELEC Rules of Procedure cited by the petitioner, became effective only on November 15, 1988, seven days after publication of the said Rules in the Official Gazette pursuant to Section 4, Rule 44 thereof.[3] These rules could not retroact to January 26, 1988, when he filed his petition with the COMELEC.

In his Reply, the petitioner argues that even if the Omnibus Election Code did not require it, the payment of filing fees was still necessary under Res. No. 1996 and, before that, Res. No. 1450 of the respondent COMELEC, promulgated on January 12, 1988, and February 26, 1980, respectively. To this, the private respondent counters that the latter resolution was intended for the local elections held on January 30, 1980, and did not apply to the 1988 local elections, which were supposed to be governed by the first-mentioned resolution. However, Res. No. 1996 took effect only on March 3, 1988, following the lapse of seven days after its publication as required by RA No. 6646, otherwise known as the Electoral Reform Law of 1987, which became effective on January 5, 1988. Its Section 30 provides in part:

Sec. 30. Effectivity of Regulations and Orders, of the Commission. - The Rules and regulations promulgated by the Commission shall take effect on the seventh day after their publication in the Official Gazette or in at least (2) daily newspapers of general circulation in the Philippines.

The Court has considered the arguments of the parties and holds that the petition for quo warranto was filed on time. We agree with the respondents that the fee was paid during the ten-day period as extended by the pendency of the petition when it was treated by the COMELEC as a pre-proclamation proceeding which did not require the payment of a filing fee. At that, we reach this conclusion only on the assumption that the requirement for the payment of the fees in quo warranto proceedings was already effective. There is no record that Res. No. 1450 was even published; and as for Res. No. 1996, this took effect only on March 3, 1988, seven days after its publication in the February 25, 1988 issues of the Manila Chronicle and the Philippine Daily Inquirer, or after the petition was filed.

The petitioner forgets *Tañada v. Tuvera*[4] when he argues that the resolutions became effective "immediately upon approval" simply because it was so provided therein. We held in that case that publication was still necessary under the due process clause despite such effectivity clause.

In any event, what is important is that the filing fee was paid, and whatever delay there may have been is not imputable to the private respondent's fault or neglect. It is true that in the *Manchester Case*, we required the timely payment of the filing fee as a precondition for the timeliness of the filing of the case itself. In *Sun Insurance Office, Ltd. v. Asuncion*,[5] however, this Court, taking into account the special circumstances of that case, declared:

This Court reiterates the rule that the trial court acquires jurisdiction over a case only upon the payment of the prescribed filing fee. However, the court may allow the payment of the said fee within a reasonable time, In the event of non-compliance therewith, the case shall be dismissed.

The same idea is expressed in Rule 42, Section 18, of the COMELEC Rules of Procedure adopted on June 20, 1988, thus:

Sec. 18. Non-payment of prescribed fees. - If the fees above prescribed are not paid, the Commission may refuse to take action thereon until they are paid and may dismiss the action or the proceeding. (Emphasis supplied.)

The Court notes that while arguing the technical point that the petition for quo warranto should be dismissed for failure to pay the filing fee on time, the petitioner would at the same time minimize his alleged lack of citizenship as "a futile technicality." It is regrettable, to say the least, that the requirement of citizenship as a qualification for public office can be so demeaned. What is worse is that it is regarded as an even less important consideration than the reglementary period the petitioner insists upon.

This matter should normally end here as the sole issue originally raised by the petitioner is the timeliness of the quo warranto, proceedings against him. However, as his citizenship is the subject of that proceeding, and considering the necessity for an early resolution of that more important question clearly and urgently affecting the public interests, we shall directly address it now in this same action.

The Court has similarly acted in a notable number of cases, thus:

From the foregoing brief statement of the nature of the instant case, it would appear that our sole function in this proceeding should be to resolve the single issue of whether or not the Court of Appeals erred in ruling that the motion for new trial of the GSIS in question should indeed be deemed pro forma. But going over the extended pleadings of both parties, the Court is immediately impressed that substantial justice may not be timely achieved, if we should decide this case upon such, a technical ground alone. We have carefully read all the allegations and arguments of the parties, very ably and comprehensively expounded by evidently knowledgeable and unusually competent counsel, and we feel we can better serve the interests of justice by broadening the scope of our inquiry, for as the record before us stands, we see that there is enough basis for us to end the basic controversy between the parties here and now, dispensing, however, with procedural steps which would not anyway affect substantially the merits of their respective claims.[6]

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While it is in the fault of the petitioner for appealing to the wrong court and thereby allowing the period for appeal to lapse, the more correct procedure was for the respondent court to forward the case to the proper court which was the Court of Appeals for appropriate action. Considering, however, the length of time that this case has been pending, we apply the rule in the case of *Del Castillo v. Jaymalin*, (112 SCRA 629) and follow the principle enunciated in *Alger Electric, Inc. v. Court of Appeals*, (135 SCRA 37) which states:

"x x x it is a cherished rule of procedure for this Court to always strive to settle the entire controversy in a single proceeding leaving no root or branch to bear the seeds of future litigation. No useful purpose will be served if this case is remanded to the trial court only to have its decision raised again to the Intermediate Appellate Court and from there to this Court." (p. 43)

Only recently in the case of *Beautifont, Inc., et al. v. Court of Appeals, et al.* (G.R. No. 50141, January 29, 1988), we stated that:

"x x x But all those relevant facts are now before this Court. And those facts dictate the rendition of a verdict in the petitioner's favor. There is therefore no point in referring the case back to the Court of Appeals. The facts and the legal propositions involved will not change, nor should the ultimate judgment. Considerable time has already elapsed and, to serve the ends of justice, it is time that the controversy is finally laid to rest. (See *Sotto v. Samson*, 5 SCRA 733; *Republic v. Paredes*, 108 Phil. 57; *Lianga Lumber Co. v. Lianga Timber Co., Inc.*, 76

SCRA 197; *Erico v. Heirs of Chigas*, 98 SCRA 575; *Francisco v. City of Davao*, 12 SCRA 628; *Valencia v. Mabilangan*, 105 Phil. 162). 'Sound practice seeks to accommodate the theory which avoids waste of time, effort and expense, both to the parties and the government, not to speak of delay in the disposal of the case (cf. *Fernandez v. Garcia*, 92 Phil. 592, 597). A marked characteristic of our judicial set-up is that where the dictates of justice so demand x x x the Supreme Court should act, and act with finality.' (*Li Siu Liat v. Republic*, 21 SCRA 1039, 1046, citing *Samal v. CA*, 99 Phil. 230 and *U.S. v. Gimenez*, 34 Phil. 74). In this case, the dictates of justice do demand that this Court act, and act with finality." [7]

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Remand of the case to the lower court for further reception of evidence is not necessary where the court is in a position to resolve the dispute based on the records before it. On many occasions, the Court, in the public interest and the expeditious administration of justice, has resolved actions on the merits instead of remanding them to the trial court for further proceedings, such as where the ends of justice would not be subserved by the remand of the case or when public interest demands an early disposition of the case or where the trial court had already received all the evidence of the parties. [8]

This course of action becomes all the more justified in the present case where, to repeat for stress, it is claimed that a foreigner is holding a public office.

We also note in his Reply, the petitioner says:

In adopting private respondent's comment, respondent COMELEC implicitly adopted as "its own" private respondent's repeated assertion that petitioner is no longer a Filipino citizen. In so doing, has not respondent COMELEC effectively disqualified itself, by reason of prejudgment, from resolving the petition for quo warranto filed by private respondent still pending before it? [9]

This is still another reason why the Court has seen fit to rule directly on the merits of this case.

Going over the record, we find that there are two administrative decisions on the question of the petitioner's citizenship. The first was rendered by the Commission on Elections on May 12, 1982, and found the petitioner to be a citizen of the Philippines. [10] The second was rendered by the Commission on Immigration and Deportation on September 13, 1988, and held that the petitioner was not a citizen of the Philippines. [11]

The first decision was penned by then COMELEC Chairman Vicente Santiago, Jr., with Commissioners Pabalate, Savellano and Opinion concurring in full and Commissioner Bacungan concurring in the dismissal of the petition "without prejudice to the issue of the respondent's citizenship being raised anew in a proper case." Commissioner Sagadraca reserved his vote, while Commissioner Felipe was for deferring decision until representations shall have been made with the Australian Embassy for official verification of the petitioner's alleged naturalization as an Australian.

The second decision was unanimously rendered by Chairman Miriam Defensor-Santiago and Commissioners Alano and Geraldez of the Commission on Immigration and Deportation.

It is important to observe that in the proceeding before the COMELEC, there was no direct proof that the herein petitioner had been formally naturalized as a citizen of Australia. This conjecture, which was eventually rejected, was merely inferred from the fact that he had married an Australian citizen, obtained an Australian passport, and registered as an alien with the CID upon his return to this country in 1980.

On the other hand, the decision of the CID took into account the official statement of the Australian Government dated August 12, 1984, through its Consul in the Philippines, that the petitioner was still an Australian citizen as of that date by reason of his naturalization in 1976. That statement [12] is reproduced in full as follows:

I, GRAHAM COLIN WEST, Consul of Australia in the Philippines, by virtue of a certificate of appointment signed and sealed by the Australian Minister of State for Foreign Affairs on 19 October 1983, and recognized as such by Letter of Patent signed and sealed by the Philippines Acting Minister of Foreign Affairs on 23 November 1983, do hereby provide the following statement in response to the Subpoena Testificandum dated 9 April 1984 in regard to the Petition for disqualification against RAMON LABO, JR. Y LOZANO (SPC No. 84-73), and do hereby certify that the statement is true and correct.

STATEMENT

A) RAMON LABO, JR. Y LOZANO, date of birth 23 December 1934, was married in the Philippines to an Australian citizen. As the spouse of an Australian citizen, he was not required to meet normal requirements for the grant of citizenship and was granted Australian citizenship by Sydney on 28 July 1976.

B) Any person over the age of 16 years who is granted Australian citizenship must take an oath of allegiance or make an affirmation of allegiance. The wording of the oath of affirmation is: "I, renouncing all other allegiance" etc. This need not necessarily have any effect on his former nationality as this would depend on the citizenship laws of his former country.

C) The marriage was declared void in the Australian Federal Court in Sydney on 27 June 1980 on the ground that the marriage had been bigamous.

D) According to our records LABO is still an Australian citizen.

E) Should he return to Australia, LABO may face court action in respect of Section 50 of Australian Citizenship Act 1948 which relates to the giving of false or misleading information of a material nature in respect of an application for Australian citizenship. If such a prosecution was successful, he could be deprived of Australian citizenship under Section 21 of the Act.

F) There are two further ways in which LABO could divest himself of Australian citizenship:

(i) He could make a declaration of Renunciation of Australian citizenship under Section 18 of the Australian Citizenship Act, or

(ii) If he acquired another nationality, (for example, Filipino) by a formal and voluntary act other than marriage, then he would automatically lose his Australian citizenship under Section 17 of the Act.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL OF THE AUSTRALIAN EMBASSY, MANILA, THIS 12TH DAY OF APRIL 1984.

DONE AT MANILA IN THE PHILIPPINES.

(Signed)

GRAHAM C. WEST

Consul

This was affirmed later by the letter of February 1, 1988, addressed to the private respondent by the Department of Foreign Affairs reading as follows[13]:

Sir:

With reference to your letter dated 1 February 1988, I wish to inform you that inquiry made with the Australian Government through the Embassy of the Philippines in Canberra has elicited the following information:

1) That Mr. Ramon L. Labo, Jr. acquired Australian citizenship on 28 July 1976.

2) That prior to 17 July 1986, a candidate for Australian citizenship had to either swear an oath of allegiance or make an affirmation of allegiance which carries a renunciation of "all other allegiance."

Very truly yours.

For the Secretary of Foreign Affairs:

(SGD) RODOLFO SEVERINO, JR.

Assistant Secretary

The decision also noted the oath of allegiance taken by every naturalized Australian reading as follows:

OATH OF ALLEGIANCE

I, A.B., renouncing all other allegiance, swear by Almighty God that I will be faithful and bear true allegiance to Her Majesty Elizabeth the Second, Queen of Australia, Her heirs and successors according to law, and that I will faithfully observe the laws of Australia and fulfill my duties as an Australian citizen.[14]

and the Affirmation of Allegiance, which declares:

AFFIRMATION OF ALLEGIANCE

I, A.B., renouncing all other allegiance, solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to Her Majesty Elizabeth the Second, Queen of Australia, Her heirs and successors according to law, and that I will faithfully observe the Laws of Australia and fulfill my duties as an Australian citizen.[15]

The petitioner does not question the authenticity of the above evidence. Neither does he deny that he obtained Australian Passport No. 754705, which he used in coming back to the Philippines in 1980, when he declared before the immigration authorities that he was an alien and registered as such under Alien Certificate of Registration No. B-323985.[16] He later asked for the change of his status from immigrant to a returning former Philippine citizen and was granted Immigrant Certificate of Residence No. 223809.[17] He also categorically declared that he was a citizen of Australia in a number of sworn statements voluntarily made by him and even sought to avoid, the jurisdiction of the barangay court on the ground that he was a foreigner.[18]

The decision of the COMELEC in 1982 quaintly dismisses all these acts as "mistakes" that did not divest the petitioner of his citizenship, although, as earlier noted, not all the members joined in this finding. We reject this ruling as totally baseless. The petitioner is not an unlettered person who was not aware of the consequences of his acts, let alone the fact that he was assisted by counsel when he performed, these acts.

The private respondent questions the motives of the COMELEC at that time and stresses Labo's political affiliation with the party in power then, but we need not go into that now.

There is also the claim that the decision can no longer be reversed because of the doctrine of *res judicata*, but this too must be dismissed. This doctrine does not apply to questions of citizenship, as the Court has ruled in several cases.[19] Moreover, it does not appear that it was properly and seasonably pleaded, in a motion to dismiss or in the answer, having been invoked only when the Petitioner filed his reply[20] to the private respondent's comment. Besides, one of the requisites of *res judicata*, to wit, identity of parties, is not present in this case.

The petitioner's contention that his marriage to an Australian national in 1976 did not automatically divest him of Philippine citizenship is irrelevant. There is no claim or finding that he automatically ceased to be a Filipino because of that marriage. He became a citizen of Australia because he was naturalized as such through a formal and positive process, simplified in his case because he was married to an Australian citizen. As a condition for such naturalization, he formally took the Oath of Allegiance and/or made the Affirmation of Allegiance, both quoted above. Renouncing another allegiance, he swore "to be faithful and bear true allegiance to Her Majesty Elizabeth the Second, Queen of Australia . . ." and to fulfill his duties "as an Australian citizen."

The petitioner now claims that his naturalization in Australia made him at worst only a dual national and did not divest him of his Philippine citizenship. Such a specious argument cannot stand against the clear provisions of CA No. 63, which enumerates the modes by which Philippine citizenship may be lost. Among these are: (1) naturalization in a foreign country; (2) express renunciation of citizenship; and (3) subscribing to an oath of allegiance to support the Constitution or laws of a foreign country, all of which are applicable to the petitioner. It is also worth mentioning in this connection that under Article IV, Section 5, of the present Constitution, "Dual allegiance of citizens is inimical to the national interest and shall be dealt with by law."

Even if it be assumed that, as the petitioner asserts, his naturalization in Australia was annulled after it was found that his marriage to the Australian citizen was bigamous, that circumstance alone did not automatically restore his Philippine citizenship. His divestiture of Australian citizenship does not concern us here. That is a matter between him and his adopted country. What we must consider is the fact that he voluntarily and freely rejected Philippine citizenship and willingly and knowingly embraced the citizenship of a foreign country. The possibility that he may have been subsequently rejected by Australia, as he claims, does not mean that he has been automatically reinstated as a citizen of the Philippines.

Under CA No. 63 as amended by PD No. 725, Philippine citizenship may be reacquired by direct act of Congress, by naturalization, or by repatriation. It does not appear in the record, nor does the petitioner claim, that he has reacquired Philippine citizenship by any of these methods. He does not point to any judicial decree of naturalization as to any statute directly conferring Philippine citizenship upon him. Neither has he shown that he has complied with PD No. 725, providing that:

x x x (2) natural-born Filipinos who have lost their Philippine citizenship may reacquire Philippine citizenship through repatriation by applying with the Special Committee on Naturalization created by Letter of Instruction No. 270, and, if their applications are approved, taking the necessary oath of allegiance to the Republic of the Philippines, after which they shall be deemed to have reacquired Philippine citizenship. The Commission on Immigration and Deportation shall thereupon cancel their certificate of registration. (Emphasis supplied.)

That is why the Commission on Immigration and Deportation rejected his application for the cancellation of his alien certificate of registration. And that is also the reason we must deny his present claim for recognition as a citizen of the Philippines.

The petitioner is not now, nor was he on the day of the local elections on January 18, 1988, a citizen of the Philippines. In fact, he was not even a qualified voter under the Constitution itself because of his alienage.[21] He was therefore ineligible as a candidate for mayor of Baguio City under Section 42 of the Local Government Code providing in material part as follows:

Sec. 42. Qualifications. - (1) An elective local official must be a Citizen of the Philippines, at least twenty-three years of age on election day, a qualified voter registered as such in the barangay, municipality, city or province where he proposes to be elected, a resident therein for at least one year at the time of the filing of his certificate of candidacy, and able to read and write English, Pilipino, or any other local language or dialect.

The petitioner argues that his alleged lack of citizenship is a "futile technicality" that should not frustrate the will of the electorate of Baguio City who elected him by a "resonant and thunderous majority." To be accurate, it was not as loud as all that, for his lead over the second-placer was only about 2,100 votes. In any event, the people of that locality could not have, even unanimously, changed the requirements of the Local Government Code and the Constitution. The electorate had no power to permit a foreigner owing his total allegiance to the Queen of Australia, or at least a stateless individual owing no allegiance to the Republic of the Philippines, to preside over them as mayor of their city. Only citizens of the Philippines have that privilege over their countrymen.

The probability that many of those who voted for the petitioner may have done so in the belief that he was qualified only strengthens the conclusion that the results of the election cannot nullify the qualifications for the office now held by him. These qualifications are continuing requirements; once any of them is lost during incumbency, title to the office itself is deemed forfeited. In the case at bar, the citizenship and voting requirements were not subsequently lost but were not possessed at all in the first place on the day of the election. The petitioner was disqualified from running as mayor and, although elected, is not now qualified to serve as such.

Finally, there is the question of whether or not the private respondent, who filed the quo warranto Petition, can replace the petitioner as mayor. He cannot. The simple reason is that as he obtained only the second highest number of votes in the election, he was obviously not the choice of the people of Baguio City.

The latest ruling of the Court on this issue is *Santos v. Commission on Elections*,^[22] decided in 1985. In that case, the candidate who placed second was proclaimed elected after the votes for his winning rival, who was disqualified as a turncoat and considered a non-candidate, were all disregarded as stray. In effect, the second placer won by default. That decision was supported by eight members of the Court then,^[23] with three dissenting^[24] and another two reserving their vote.^[25] One was on official leave.^[26]

Re-examining that decision, the Court finds, and so holds, that it should be reversed in favor of the earlier case of *Geronimo v. Ramos*,^[27] which represents the more logical and democratic rule. That case, which reiterated the doctrine first announced in 1912 in *Topacio vs. Paredes*,^[28] was supported by ten members of the Court,^[29] without any dissent, although one reserved his vote,^[30] another took no part,^[31] and the two on leave.^[32] There the Court held:

"xxx it would be extreme repugnant to the basic concept of the constitutionality guaranteed right to suffrage if a candidate who has not required the majority or plurality of votes is proclaimed a winner and imposed as the representative of a constituency, the majority of which have positively declared through their ballots that they do not choose him.

Sound policy dictates that public elective offices are filled by those who have received the highest number of votes cast in the election for that office, and it is a fundamental idea in all republican forms of government that no one can be declared elected and no measure can be declared carried unless he or it receives a majority or plurality of the legal votes cast in the election. (20 Corpus Juris 2nd, S 243, p. 676.)

The fact that the candidate who obtained the highest number of votes is later declared to be disqualified or not eligible for the office to which he was elected does not necessarily entitle the candidate who obtained the second highest number of votes to be declared the winner of the elective office. The votes cast for a dead, disqualified, or non-eligible person may not be valid to vote the winner into office or maintain him there. However, in the absence of a statute which clearly asserts a contrary political and legislative policy on the matter, if the votes were cast in the sincere belief that the candidate was alive, qualified, or eligible, they should not be treated as stray, void or meaningless.

It remains to stress that the citizen of the Philippines must take pride in his status as such and cherish this priceless gift that, out of more than a hundred other nationalities, God has seen fit to grant him. Having been so endowed, he must not lightly yield this precious advantage, rejecting it for another land that may offer him material and other attractions that he may not find in his own country. To be sure, he has the right to renounce the Philippines if he sees fit and transfer his allegiance to a state with more allurements for him.^[33] But having done so, he cannot expect to be welcomed back with open arms once his taste for his adopted country turns sour or he is himself disowned by it as an undesirable alien.

Philippine citizenship is not a cheap commodity that can be easily recovered after its renunciation. It may be restored only after the returning renegade makes a formal act of re-dedication to the country he has abjured and he

solemnly affirms once again his total and exclusive loyalty to the Republic of the Philippines. This may not be accomplished by election to public office.

WHEREFORE, petitioner Ramon J. Labo, Jr. is hereby declared NOT a citizen of the Philippines and therefore DISQUALIFIED from continuing to serve as Mayor of Baguio City. He is ordered to VACATE his office and surrender the same to the Vice-Mayor of Baguio City once this decision becomes final and executory. The temporary restraining order dated January 31, 1989, is LIFTED.

Fernan, C.J., Narvasa, Melencio-Herrera, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea and Regalado, JJ., concur.

Gutierrez, Jr., J., see concurring statement.

[1] 149 SCRA 562.

[2] Sec. 248. Effect of filing petition to annul or suspend the proclamation. - The filing with the Commission of a petition to annul or to suspend the proclamation of any candidate shall suspend the running of the period within which to file an election protest or quo warranto proceedings.

[3] Rule 44, Sec. 4. COMELEC Rules of Procedure, Effectivity. - These Rules shall be published in the Official Gazette and shall take effect on the seventh day following its publication.

Actually, the Rules became effective seven days after the official release of the Official Gazette dated June 27, 1988 on November 8, 1988.

[4] 146 SCRA 446.

[5] G.R. Nos. 79937-38, February 13, 1989.

[6] Velasco v. Court of Appeals, 95 SCRA 616. See also Ortigas v. Ruiz, 148 SCRA 326; First Asian Transport and Shipping Agency, Inc. v. Ople, 142 SCRA 542; Quisumbing v. Court of Appeals, 122 SCRA 703; Del Castillo v. Jaymalin, 112 SCRA 629; Francisco v. City of Davao, 12 SCRA 628.

[7] Tejones v. Gironella, 159 SCRA 100.

[8] Lianga Bay Logging Co., Inc. v. CA, 157 SCRA 357.

[9] Rollo, p. 159.

[10] Ibid., pp. 182A-195.

[11] Id., pp. 94-107.

[12] id. Emphasis supplied.

[13] id. Emphasis supplied.

[14] id. Emphasis supplied.

[15] id. Emphasis supplied.

[16] id.

[17] id.

[18] (i) Statement dated 25 November 1976 that he is an "Australian," made before Det. Abaya.

(ii) Statement affirming that he is an Australian citizen in the affidavit-complaint executed on 1 July 1988 and in the complaint filed on 13 January 1982 with the City Court of Baguio: "x x x being an Australian citizen the subject of this complaint is one of which the Barangay Court cannot take cognizance of."

[19] *Soria v. Commissioner of Immigration*, 37 SCRA 213; *Lee v. Commissioner of Immigration*, 42 SCRA 561; *Sia Reyes v. Deportation Board*, 122 SCRA 478.

[20] Rollo, pp. 159-160.

[21] Art. V, Sec. 1, 1987 Constitution.

[22] 137 SCRA 740.

[23] Cuevas, J., ponente, with Makasiar, Concepcion, Jr., Escolin, Relova, De la Fuente, Alampay and Aquino, JJ., concurring.

[24] Teehankee, Acting C.J., Abad Santos and Melencio-Herrera, JJ.

[25] Plana and Gutierrez, Jr., JJ.

[26] Fernando, C.J.

[27] 136 SCRA 435.

[28] 23 Phil. 238.

[29] Gutierrez, Jr., J., ponente, with Teehankee, Abad Santos, Melencio-Herrera, Plana, Escolin, Relova, De la Fuente, Cuevas and Alampay, JJ., concurring.

[30] Makasiar, J.

[31] Aquino, J.

[32] Fernando, C.J. and Concepcion, Jr., J.

[33] Except in times of war, under CA No. 63.

SEPARATE CONCURRING OPINION

GUTIERREZ, JR., J.:

As in the case of *Frivaldo v. Commission on Elections* (G.R. No. 87193, June 23, 1989) and in spite of what would otherwise be insuperable procedural obstacles, I am constrained to concur in the Court's decision so forcefully and felicitously written by Mr. Justice Isagani A. Cruz. I do so because I cannot see how the Court can countenance a citizen of a foreign country or one who has renounced Filipino citizenship sitting as the mayor of one of the most important cities in the Philippines.

What was raised to the Court was only the issue of the COMELEC's jurisdiction to inquire into the citizenship of the petitioner. Ordinarily, we would have limited ourselves to sustaining the jurisdiction of the COMELEC and remanding the case for further proceedings and the rendition of a decision. Under Section 7, Article IX-A of the Constitution, a decision, order, or ruling of the COMELEC may be brought to the Supreme Court on certiorari by

the aggrieved party within thirty days from receipt of a copy thereof. No decision on the petitioner's citizenship has been rendered and no decision can, as yet, be elevated to us for review. I, therefore, reiterate my statement in *Frivaldo* that my concurrence is limited only to cases involving citizenship and disloyalty but not to any of the many other grounds for disqualification cited in my concurring opinion.

Our decision to disqualify the petitioner is particularly distressing to me because I am impressed by the singular achievements in the beautification of Baguio City, in the peace and order situation, and in the resurgence of civic pride so visible to anyone who has gone up to Baguio since Mr. Labo assumed the mayorship. However, I see no other way this case can be resolved except by adopting a pragmatic approach. It is beyond dispute that a non-citizen cannot be the mayor of Baguio City. I join the rest of the Court.

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