

IN THE MATTER OF THE PETITION FOR DISQUALIFICATION OF TESS DUMPIT-MICHELENA, TESS DUMPIT-MICHELENA, PETITIONER, VS. CARLOS BOADO, FERNANDO CALONGE, SALVADOR CARRERA, BENITO CARR...

G.R. Nos. 163619-20. November 17, 2005

Ponente: CARPIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-163619-20/>

CARPIO, J.:

The Cases

Before this Court is a petition for certiorari[1] assailing the 9 March 2004 Resolution[2] of the Commission on Elections ("COMELEC") Second Division and the 7 May 2004 Resolution[3] of the COMELEC En Banc in SPA 04-015[4] and SPA 04-016.[5]

The COMELEC Second Division cancelled the certificate of candidacy of Tess Dumpit-Michelena ("Dumpit-Michelena") on the ground of material misrepresentation. The COMELEC En Banc denied Dumpit-Michelena's motion for reconsideration for late filing.

The Antecedent Facts

Dumpit-Michelena was a candidate for the position of mayor in the municipality of Agoo, La Union during the 10 May 2004 Synchronized National and Local Elections. Engineer Carlos Boado, Rogelio L. De Vera, Fernando Calonge, Benito Carrera, Salvador Carrera and Domingo Carrera ("Boado, et al.") sought Dumpit-Michelena's disqualification and the denial or cancellation of her certificate of candidacy on the ground of material misrepresentation under Sections 74[6] and 78[7] of Batas Pambansa Blg. 881 ("Omnibus Election Code").

Boado, et al. alleged that Dumpit-Michelena, the daughter of Congressman Tomas Dumpit, Sr. ("Congressman Dumpit") of the Second District of La Union, is not a resident of Agoo, La Union. Boado, et al. claimed that Dumpit-Michelena is a resident and was a registered voter of Naguilian, La Union and that Dumpit-Michelena only transferred her registration as voter to San Julian West, Agoo, La Union on 24 October 2003. Her presence in San Julian West, Agoo, La Union was noticed only after she filed her certificate of candidacy. Boado, et al. presented, among other things, a joint affidavit of all barangay officials of San Julian West to prove that Dumpit-Michelena is not a resident of the barangay.

Dumpit-Michelena countered that she already acquired a new domicile in San Julian West when she purchased from her father, Congressman Dumpit, a residential lot on 19 April 2003. She even designated one Gardo Fontanilla as a caretaker of her residential house. Dumpit-Michelena presented the affidavits and certifications of her neighbors in San Julian West to prove that she actually resides in the area.

The Ruling of the COMELEC

In a Resolution issued on 9 March 2004, the COMELEC Second Division ruled, as follows:

WHEREFORE, premises considered, the instant petitions are hereby GRANTED. Respondent is hereby adjudged to be a non-resident of Brgy. San Julian West, Agoo, La Union for purposes of the May 10, 2004 synchronized national and local elections. Accordingly, her Certificate of Candidacy is hereby CANCELLED on the ground of material misrepresentation under Sections 78 and 74 of the Omnibus Election Code, as amended, in relation to Comelec Resolution No. 6452.

SO ORDERED.[8]

The COMELEC Second Division held that Boado, et al. established by convincing evidence that Dumpit-Michelena is not a bona fide resident of San Julian West, Agoo, La Union. The COMELEC Second Division found that among the neighbors of Dumpit-Michelena who executed affidavits in her favor, only one is a resident of San Julian West. The others are from other barangays of Agoo, La Union. The COMELEC Second Division noted that several affiants who declared that Dumpit-Michelena resides in San Julian West later retracted their statements on the ground that they did not read the contents of the documents when they signed the affidavits.

Dumpit-Michelena moved for the reconsideration of the Resolution of the COMELEC Second Division.

In a Resolution issued on 7 May 2004, the COMELEC En Banc denied Dumpit-Michelena's motion for reconsideration. The COMELEC En Banc ruled that the motion for reconsideration was filed three days after the last day of the prescribed period for filing the motion.

Hence, the present recourse by Dumpit-Michelena.

The Issues

The issues raised in the petition are the following:

- Whether Dumpit-Michelena's motion for reconsideration was filed on time;
- Whether Dumpit-Michelena was denied due process of law; and
- Whether Dumpit-Michelena satisfied the residency requirement under the Local Government Code of 1991.

The Ruling of the Court

The petition is partly meritorious.

On Timeliness of the Motion for Reconsideration

We rule that the COMELEC En Banc committed grave abuse of discretion in denying Dumpit-Michelena's motion for reconsideration for late filing.

Resolution No. 6452[9] provides:

SECTION 8. Motion for Reconsideration. - A motion to reconsider a decision, resolution, order or ruling of a division shall be filed within three (3) days from the promulgation thereof. Such motion, if not pro-forma, suspends the execution for implementation of the decision, resolution, order and ruling.

Within twenty-four (24) hours from the filing thereof, the Clerk of the Commission shall notify the Presiding Commissioner. The latter shall, within two (2) days thereafter, certify the case to the Commission en banc.

The Clerk of the Commission shall calendar the motion for reconsideration for the resolution of the Commission en banc within three (3) days from the certification thereof.

In this case, the Resolution cancelling Dumpit-Michelena's Certificate of Candidacy was promulgated in open

court on 9 March 2004. Dumpit-Michelena's counsel was present during the promulgation. Following Section 8 of Resolution No. 6452, Dumpit-Michelena had until 12 March 2004 within which to file her motion for reconsideration. However, while Dumpit-Michelena claims to be familiar with Resolution No. 6452, she filed her motion for reconsideration on 15 March 2004. This is because during the promulgation of the cases on 9 March 2004, the COMELEC Second Division issued an Order^[10] which states:

On call of these cases today for promulgation, counsels for the respondent appeared. There was no appearance for the petitioners. Counsel manifested that they filed a manifestation and motion and an urgent motion holding in abeyance the promulgation of the resolution of these cases. The motions to hold in abeyance the promulgation is hereby denied. However, the respondent may file a motion for reconsideration within five (5) days from receipt of the decision if the decision is adverse to their client. (Emphasis supplied)

Apparently, the COMELEC committed an oversight in declaring that Dumpit-Michelena had five days within which to file her motion for reconsideration. The COMELEC overlooked Resolution No. 6452. For her part, Dumpit-Michelena only followed the period provided in the Order. She filed her motion for reconsideration on 15 March 2004 since 14 March 2004 fell on a Sunday. This Court can hardly fault her for following the COMELEC Order.

On Denial of Due Process

Dumpit-Michelena asserts that she was denied due process when the COMELEC summarily resolved the disqualification case against her without giving her a fair opportunity to submit additional evidence to support her case.

Resolution No. 6452 delegates the reception of evidence in disqualification cases to field officials designated by the COMELEC.^[11] The summary nature of disqualification proceedings is provided under Section 5(A)(6) of Resolution No. 6452 which states:

- The proceeding shall be summary in nature. In lieu of the testimonies, the parties shall submit their affidavits or counter-affidavits and other documentary evidence including their position paper or memorandum within a period of three (3) inextendible days;

The position paper or memorandum of each party shall contain the following:

- A "Statement of the Case", which is a clear and concise statement of the nature of the action, a summary of the documentary evidence and other matters necessary to an understanding of the nature of the controversy;
- A "Statement of the Issues", which is a clear and concise statement of the issues;
- The "Argument" which is a clear and concise presentation of the argument in support of each issue; and
- The "Relief" which is a specification of the judgment which the party seeks to obtain. The issues raised in his/its pleadings but not included in the Memorandum shall be deemed waived or abandoned. Being a summation of the parties' pleadings and documentary evidence, the Commission may consider the memorandum alone in deciding or resolving the petition.

In these cases, Dumpit-Michelena filed a motion for the inhibition of Atty. Marino V. Salas ("Atty. Salas"), the Provincial Election Supervisor and hearing officer designated to receive the evidence of the parties. She alleged that Boado, et al.'s counsel was the former Regional Director of the COMELEC Regional Office and undue influence might be exerted over Atty. Salas. In the meanwhile, she submitted a "semblance of a memorandum if only to insure x x x that she would be able to convey her opposition to the petitions filed against her."^[12] Dumpit-Michelena alleged that she wanted to submit her evidence to a hearing officer who would not be biased and would not be inclined to side with Boado, et al.

Without resolving the Motion to Inhibit, Atty. Salas forwarded the records of the case to COMELEC Manila. However, to obviate suspicion of partiality, Atty. Salas did not make any recommendation as required under Resolution No. 6452.

We rule that there was no denial of due process in the cases before the Court.

Section 5(A) of Resolution No. 6452 provides:

- The hearing must be completed within ten (10) days from the date of the filing of the answer. The Hearing Officer concerned shall personally or through his authorized representative submit to the Clerk of the Commission his Hearing/Case report(s) indicating his findings and recommendations within five (5) days from the completion of the hearing and reception of evidence together with the complete records of the case;
- Upon receipt of the records of the case [indicating] the findings and recommendations of the Hearing Officer concerned, the Clerk of the Commission shall immediately docket the case consecutively and calendar the same for raffle to a division;
- The division to whom the case is raffled shall, after evaluation and consultation, assign immediately the same to a member who shall pen the decision within five (5) days from the date of consultation.

Resolution No. 6452 is clear. The hearing officer is only designated to hear and receive evidence. His conclusions are merely recommendatory upon the COMELEC. Dumpit-Michelena knew fully well that the entire records of the case would be forwarded to COMELEC Manila for the resolution of the cases. She had all the opportunity to present her evidence to support her stand. Instead, she chose to file a Memorandum which she described as one "done in 'half-hearted' compliance with the rules." [13] She may not claim now that she was denied due process because she was unable to present all her evidence before the hearing officer.

On Residency Requirement

Dumpit-Michelena failed to prove that she has complied with the residency requirement.

Section 65 of the Omnibus Election Code provides that the qualifications for elective provincial, city, municipal and barangay officials shall be those provided for in the Local Government Code. Section 39(a) of the Local Government Code of 1991 [14] states:

SEC. 39. Qualifications. - (a) An elective local official must be a citizen of the Philippines; a registered voter in the barangay, municipality, city, or province or, in the case of a member of the sangguniang panlalawigan, sangguniang panglungsod, or sangguniang bayan, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect. (Emphasis supplied)

The concept of residence in determining a candidate's qualification is already a settled matter. For election purposes, residence is used synonymously with domicile. [15] In *Co v. Electoral Tribunal of the House of Representatives*, [16] this Court declared:

x x x The term "residence" has been understood as synonymous with domicile not only under the previous Constitutions but also under the 1987 Constitution.

The deliberations of the Constitutional Commission reveal that the meaning of residence vis-a-vis the qualifications of a candidate for congress continues to remain the same as that of domicile, to wit:

Mr. Nollado: With respect to Section 5, I remember that in the 1971 Constitutional Convention, there was an attempt to require residence in the place not less than one year immediately preceding the day of the elections. So my question is: What is the committee's concept of residence of a candidate for the legislature? Is it actual residence or is it the concept of domicile or constructive residence?

Mr. Davide: Madame President, insofar as the regular members of the National Assembly are concerned, the proposed section merely provides, among others, 'and a resident thereof', that is, in the district, for a period of not less than one year preceding the day of the election. This was in effect lifted from the 1973 Constitution, the interpretation given to it was domicile." (Records of the 1987 Constitutional Convention, Vol. II, July 22, 1986, p. 87)

x x x

Mrs. Rosario Braid: The next question is on Section 7, page 2. I think Commissioner Nollado has raised the same point that 'resident' has been interpreted at times as a matter of intention rather than actual residence.

Mr. Delos Reyes: Domicile.

M[r]s. Rosario Braid: Yes, So, would the gentlemen consider at the proper time to go back to actual residence rather than mere intention to reside?

Mr. Delos Reyes: But we might encounter some difficulty especially considering that a provision in the Constitution in the Article on Suffrage says that Filipinos living abroad may vote as enacted by law. So, we have to stick to the original concept that it should be by domicile and not physical and actual residence." (Records of the 1987 Constitutional Commission, Vol. II, July 22, 1986, p. 110)

The framers of the Constitution adhered to the earlier definition given to the word "residence" which regarded it as having the same meaning as domicile.

Prior to her transfer, Dumpit-Michelena was a resident and registered voter of Ambaracao North, Naguilian, La Union. She claims that she has already acquired a new domicile in San Julian West and is thus qualified to run for the position of mayor. She transferred her registration as a voter of San Julian West on 24 October 2003.

Dumpit-Michelena presented a Deed of Sale dated 19 April 2003 showing her acquisition of a parcel of land in San Julian West where she eventually built a house. However, property ownership is not indicia of the right to vote or to be voted for an office.[17] Further, domicile of origin is not easily lost.[18] To successfully effect a change of domicile, there must be concurrence of the following requirements:

- (1) an actual removal or an actual change of domicile;
- (2) a bona fide intention of abandoning the former place of residence and establishing a new one; and
- (3) acts which correspond with the purpose.[19]

Without clear and positive proof of the concurrence of these three requirements, the domicile of origin continues.[20] To effect change, there must be *animus manendi* coupled with *animus non revertendi*. [21] The intent to remain in the new domicile of choice must be for an indefinite period of time, the change of residence must be voluntary, and the residence at the place chosen for the new domicile must be actual.[22]

The Court agrees with the COMELEC Second Division that Dumpit-Michelena failed to establish that she has abandoned her former domicile. Among the documents submitted by Dumpit-Michelena is a Special Power of Attorney[23] authorizing Clyde Crispino ("Crispino") to "apply, facilitate and follow up the issuance of a building permit of the beach house" she intended to put up in her lot. She also authorized Crispino to help her caretaker oversee the lot and the construction of the beach house. As correctly pointed out by the COMELEC Second Division, a beach house is at most a place of temporary relaxation. It can hardly be considered a place of residence.

In addition, the designation of caretaker with monthly compensation of P2,500[24] only shows that

Dumpit-Michelena does not regularly reside in the place. The Deed of Absolute Sale states that Dumpit-Michelena is a resident of Naguilian, La Union[25] while the Special Power of Attorney states that she is a resident of San Julian West, Agoo, La Union and No. 6 Butterfly St. Valle Verde 6, Pasig, Metro Manila. Dumpit-Michelena obviously has a number of residences and the acquisition of another one does not automatically make the most recently acquired residence her new domicile.

We considered the affidavits submitted by Dumpit-Michelena where the affiants retracted their previous affidavits stating that Dumpit-Michelena was not a resident of San Julian West. The affiants alleged that they signed the first affidavits without knowing their contents. However, the COMELEC Second Division pointed out that Boado, et al. also submitted affidavits with the affiants repudiating their previous affidavits that Dumpit-Michelena was a resident of San Julian West. The Court is inclined to give more weight to the joint affidavit of all the barangay officials of San Julian West attesting that Dumpit-Michelena is not a resident of their barangay.

Hence, the COMELEC Second Division did not commit grave abuse of discretion in cancelling Dumpit-Michelena's Certificate of Candidacy.

WHEREFORE, we DISMISS the petition. We AFFIRM the Resolution dated 9 March 2004 of the COMELEC Second Division and the Resolution dated 7 May 2004 of the COMELEC En Banc with MODIFICATION that Tess Dumpit-Michelena's motion for reconsideration was not filed late.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, and Garcia, JJ., concur.

Sandoval-Gutierrez, J., on official leave.

Chico-Nazario, J., on leave.

[1] Denominated by petitioner as Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Signed by Presiding Commissioner Mehol K. Sadain, Commissioners Florentino A. Tuason, Jr. and Manuel A. Barcelona, Jr. Rollo, pp. 29-43.

[3] Signed by COMELEC Chairman Benjamin S. Abalos, Sr., Commissioners Rufino S.B. Javier, Mehol K. Sadain, Resurreccion Z. Borra, Florentino A. Tuason, Jr., Virgilio O. Garcillano and Manuel A. Barcelona, Jr. Rollo, pp. 271-279.

[4] In the Matter of the Petition for Disqualification of Tess Dumpit-Michelena as Candidate for Mayor of Agoo, La Union. Carlos Boado, et al. v. Tess Dumpit-Michelena.

[5] In the Matter of the Petition to Deny Due Course to or Cancel Certificate of Candidacy of Tess Dumpit-Michelena as Candidate for Mayor of Agoo, La Union. Carlos Boado, et al. v. Tess Dumpit-Michelena.

[6] Section 74 enumerates the contents of certificates of candidacy which include the place of the candidate's residence.

[7] Under Section 78, any person may file a verified petition to deny due course to or cancel a certificate of candidacy exclusively on the ground that any material representation contained therein as required under Section 74 is false.

[8] Rollo, p. 43.

[9] Rules Delegating to COMELEC Field Officials the Hearing and Reception of Evidence of Disqualification Cases Filed in Connection with the May 10, 2004 National and Local Elections; Motu Proprio Actions and Disposition of Disqualification Cases (10 December 2003).

[10] Signed by Presiding Commissioner Mehol K. Sadain. Rollo, pp. 44-45.

[11] Section 1, Resolution No. 6452.

[12] Rollo, p. 13.

[13] Ibid., p. 21.

[14] Republic Act No. 7160.

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

[16] G.R. Nos. 92191-92, 30 July 1991, 199 SCRA 692.

[17] Aquino v. Commission on Elections, G.R. No. 120265, 18 September 1995, 248 SCRA 400.

[18] Romualdez-Marcos v. Commission on Elections, supra note 15.

[19] Ibid.

[20] Aquino v. Commission on Elections, supra note 17.

[21] Domino v. COMELEC, 369 Phil. 798 (1999).

[22] Ibid.

[23] Rollo, p. 83.

[24] Per a Letter dated 19 April 2003 submitted by Dumpit-Michelena as part of her evidence. COMELEC Resolution of 9 March 2004, Rollo, p. 33

[25] Rollo, p. 82.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.