

JOCELYN SY LIMKAICHONG, PETITIONER, VS. COMMISSION ON ELECTIONS, NAPOLEON N. CAMERO AND RENALD F. VILLANDO, RESPONDENTS.*G.R. NOS. 178831-32. July 30, 2009*

Ponente: PERALTA, J.

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The instant motion with prayer for oral argument filed by Louis C. Biraogo, petitioner in G.R. No. 179120, seeks a reconsideration of the Court's April 1, 2009 Decision, which granted Jocelyn D. Sy Limkaichong's petition for certiorari in G.R. Nos. 178831-32. The Court dismissed all the other petitions, including Biraogo's petition, and reversed the Joint Resolution of the Commission on Election's (COMELEC) Second Division dated May 17, 2007 in SPA Nos. 07-247 and 07-248 disqualifying Limkaichong from running as a congressional candidate in the First District of Negros Oriental due to lack of citizenship requirement.

Biraogo prefaced his motion by stating that justice and constitutionalism must remain entrenched in Philippine case law. To achieve this end, he maintained that the Court should reconsider its April 1, 2009 Decision. He also prayed for an oral argument, which he posited, would help the Court in the just and proper disposition of the pending incident.

After an assiduous review of the motion for reconsideration, we resolve that the same should be denied for lack of merit.

Most of the arguments advanced by Biraogo are a mere rehash of his previous arguments, which we have all considered and found without merit in the Decision dated April 1, 2009. Nonetheless, in order to lay to rest once and for all Biraogo's misgivings, we shall discuss only the relevant issues and revalidate our Decision by ruling on his motion as follows:

The core issue in the consolidated petitions is the qualification of Limkaichong to run for, be elected to, and assume and discharge, the position of Representative for the First District of Negros Oriental. The contention of the parties who sought her disqualification is that she is not a natural-born citizen, hence, she lacks the citizenship requirement in Section 6,[1] Article VI of the 1987 Constitution. In the election that ensued, she was voted for by the constituents of Negros Oriental and garnered the highest votes. She was eventually proclaimed as the winner and has since performed her duties and responsibilities as Member of the House of Representatives.

Indeed, the citizenship requirement was enshrined in our Constitution in order to ensure that our people and country do not end up being governed by aliens.[2] With this principle in mind, we have said in *Aquino v. COMELEC*[3] that if one of the essential qualifications for running for membership in the House of Representatives is lacking, then not even the will of a majority or plurality of the voters would substitute for a requirement mandated by the fundamental law itself. Hence assuming, time constraints notwithstanding, and after proper proceedings before the proper tribunal be had, that Limkaichong would prove to be an alien, the court of justice would tilt against her favor and would not sanction such an imperfection in her qualification to hold office.

But, first things first.

The proponents against Limkaichong's qualification stated that she is not a natural-born citizen because her parents were Chinese citizens at the time of her birth. They went on to claim that the proceedings for the naturalization of Julio Ong Sy, her father, never attained finality due to procedural and substantial defects.

In our Decision, We held that:

However, in assailing the citizenship of the father, the proper proceeding should be in accordance with Section 18 of Commonwealth Act No. 473 which provides that:

Sec. 18. Cancellation of Naturalization Certificate Issued. - Upon motion made in the proper proceedings by the Solicitor General or his representative, or by the proper provincial fiscal, the competent judge may cancel the naturalization certificate issued and its registration in the Civil Register:

- If it is shown that said naturalization certificate was obtained fraudulently or illegally;
- If the person naturalized shall, within five years next following the issuance of said naturalization certificate, return to his native country or to some foreign country and establish his permanent residence there: Provided, That the fact of the person naturalized remaining more than one year in his native country or the country of his former nationality, or two years in any other foreign country, shall be considered as prima facie evidence of his intention of taking up his permanent residence in the same;
- If the petition was made on an invalid declaration of intention;
- If it is shown that the minor children of the person naturalized failed to graduate from a public or private high school recognized by the Office of Private Education [now Bureau of Private Schools] of the Philippines, where Philippine history, government or civics are taught as part of the school curriculum, through the fault of their parents either by neglecting to support them or by transferring them to another school or schools. A certified copy of the decree canceling the naturalization certificate shall be forwarded by the Clerk of Court of the Department of Interior [now Office of the President] and the Bureau of Justice [now Office of the Solicitor General];
- If it is shown that the naturalized citizen has allowed himself to be used as a dummy in violation of the constitutional or legal provisions requiring Philippine citizenship as a requisite for the exercise, use or enjoyment of a right, franchise or privilege. (Emphasis supplied)

As early as the case of *Queto v. Catolico*, where the Court of First Instance judge motu proprio and not in the proper denaturalization proceedings called to court various grantees of certificates of naturalization (who had already taken their oaths of allegiance) and cancelled their certificates of naturalization due to procedural infirmities, the Court held that:

x x x It may be true that, as alleged by said respondents, that the proceedings for naturalization were tainted with certain infirmities, fatal or otherwise, but that is beside the point in this case. The jurisdiction of the court to inquire into and rule upon such infirmities must be properly invoked in accordance with the procedure laid down by law. Such procedure is the cancellation of the naturalization certificate. [Section 1(5), Commonwealth Act No. 63], in the manner fixed in Section 18 of Commonwealth Act No. 473, hereinbefore quoted, namely, "upon motion made in the proper proceedings by the Solicitor General or his representatives, or by the proper provincial fiscal." In other words, the initiative must come from these officers, presumably after previous investigation in each particular case. (Emphasis supplied)

Clearly, under law and jurisprudence, it is the State, through its representatives designated by statute, that may question the illegally or invalidly procured certificate of naturalization in the appropriate denaturalization proceedings. It is plainly not a matter that may be raised by private persons in an election case involving the

naturalized citizen's descendant.

Accordingly, it is not enough that one's qualification, or lack of it, to hold an office requiring one to be a natural-born citizen, be attacked and questioned before any tribunal or government institution. Proper proceedings must be strictly followed by the proper officers under the law. Hence, in seeking Limkaichong's disqualification on account of her citizenship, the rudiments of fair play and due process must be observed, for in doing so, she is not only deprived of the right to hold office as a Member of the House of Representative but her constituents would also be deprived of a leader in whom they have put their trust on through their votes. The obvious rationale behind the foregoing ruling is that in voting for a candidate who has not been disqualified by final judgment during the election day, the people voted for her bona fide, without any intention to misapply their franchise, and in the honest belief that the candidate was then qualified to be the person to whom they would entrust the exercise of the powers of government.[4]

These precepts, notwithstanding, Biraogo remained firm in his belief that this Court erred in its Decision and that the COMELEC Joint Resolution dated May 17, 2007 disqualifying Limkaichong should have been affirmed. He even went to a great extent of giving a dichotomy of the said Joint Resolution by stating that it was composed of two parts, the first part of which is the substantive part, and the second, pertains to the injunctive part. For this purpose, the dispositive portion of the said COMELEC Joint Resolution is reproduced below:

WHEREFORE, the Petitions are GRANTED and Jocelyn D. Sy-Limkaichong is declared as DISQUALIFIED from her candidacy for Representative of the First District of Negros Oriental.

The Provincial Supervisor of the Commission on Elections of Negros Oriental is hereby directed to strike out the name JOCELYN SY-LIMKAICHONG from the list of eligible candidates for the said position, and the concerned Board of Canvassers is hereby directed to hold and/or suspend the proclamation of JOCELYN SY-LIMKAICHONG as winning candidate, if any, until this decision has become final.

SO ORDERED.[5]

Biraogo maintained that the Motion for Reconsideration filed by Limkaichong suspended only the execution of the substantive relief or the first part of the above-quoted COMELEC Joint Resolution. However, it did not suspend the execution of the injunctive part and, accordingly, the Provincial Supervisor of the COMELEC should not have proceeded with Limkaichong's proclamation as the winning candidate in the elections.

His argument has no leg to stand on. We cannot take a decision or resolution on a piece-meal basis and apply only that part which is seemingly beneficial to one's cause and discard the prejudicial part which, obviously, would just be a hindrance in advancing one's stance or interests. Besides, the COMELEC Joint Resolution which Biraogo dichotomized was effectively suspended when Limkaichong timely filed her Motion for Reconsideration pursuant to Section 13(c),[6] Rule 18 and Section 2,[7] Rule 19 of the COMELEC Rules of Procedure. Hence, it cannot as yet be implemented for not having attained its finality.

Nevertheless, events have already transpired after the COMELEC has rendered its Joint Resolution. Limkaichong was proclaimed by the Provincial Board of Canvassers, she had taken her oath of office, and she was allowed to officially assume the office on July 23, 2007. Accordingly, we ruled in our April 1, 2009 Decision that the House of Representatives Electoral Tribunal (HRET), and no longer the COMELEC, should now assume jurisdiction over the disqualification cases. Pertinently, we held:

x x x The Court has invariably held that once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins.[8] It follows then that the proclamation of a winning candidate divests the COMELEC of its jurisdiction over

matters pending before it at the time of the proclamation. The party questioning his qualification should now present his case in a proper proceeding before the HRET, the constitutionally mandated tribunal to hear and decide a case involving a Member of the House of Representatives with respect to the latter's election, returns and qualifications. The use of the word "sole" in Section 17, Article VI of the Constitution and in Section 250[9] of the OEC underscores the exclusivity of the Electoral Tribunals' jurisdiction over election contests relating to its members.[10]

Section 17, Article VI of the 1987 Constitution provides:

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. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman.

x x x x

Petitioners (in G.R. Nos. 179120, 179132-33, and 179240-41) steadfastly maintained that Limkaichong's proclamation was tainted with irregularity, which will effectively prevent the HRET from acquiring jurisdiction.

The fact that the proclamation of the winning candidate, as in this case, was alleged to have been tainted with irregularity does not divest the HRET of its jurisdiction.[11] The Court has shed light on this in the case of *Vinzons-Chato*,[12] to the effect that:

In the present case, it is not disputed that respondent Unico has already been proclaimed and taken his oath of office as a Member of the House of Representatives (Thirteenth Congress); hence, the COMELEC correctly ruled that it had already lost jurisdiction over petitioner Chato's petition. The issues raised by petitioner Chato essentially relate to the canvassing of returns and alleged invalidity of respondent Unico's proclamation. These are matters that are best addressed to the sound judgment and discretion of the HRET. Significantly, the allegation that respondent Unico's proclamation is null and void does not divest the HRET of its jurisdiction:

x x x [I]n an electoral contest where the validity of the proclamation of a winning candidate who has taken his oath of office and assumed his post as congressman is raised, that issue is best addressed to the HRET. The reason for this ruling is self-evident, for it avoids duplicity of proceedings and a clash of jurisdiction between constitutional bodies, with due regard to the people's mandate.

Further, for the Court to take cognizance of petitioner Chato's election protest against respondent Unico would be to usurp the constitutionally mandated functions of the HRET.

In fine, any allegations as to the invalidity of the proclamation will not prevent the HRET from assuming jurisdiction over all matters essential to a member's qualification to sit in the House of Representatives.

The 1998 HRET Rules, as amended, provide for the manner of filing either an election protest or a petition for quo warranto against a Member of the House of Representatives. In our Decision, we ruled that the ten-day prescriptive period under the 1998 HRET Rules does not apply to disqualification based on citizenship, because qualifications for public office are continuing requirements and must be possessed not only at the time of appointment or election or assumption of office but during the officer's entire tenure. Once any of the required qualifications is lost, his title may be seasonably challenged.[13] Accordingly, the 1987 Constitution requires that Members of the House of Representatives must be natural-born citizens not only at the time of their election but during their entire tenure. Being a continuing requirement, one who assails a member's citizenship or lack of it

may still question the same at any time, the ten-day prescriptive period notwithstanding.

In fine, we hold that Biraogo had not successfully convinced us to reconsider our Decision and grant his motion for reconsideration.

In a last-ditched attempt to muddle the issues, Biraogo observed that the Decision dated April 1, 2009 is a complete turn-around from the ruling embodied in the Decision written by Justice Ruben T. Reyes which, although unpromulgated, was nonetheless signed by fourteen (14) Associate Justices and approved by the Court en banc on July 15, 2008. He decried the absence of an explanation in the Decision dated April 1, 2009 for the said departure or turn-around.

Such a position deserves scant consideration.

The Court in *Belac v. Commission on Elections*,^[14] held that a decision must not only be signed by the Justices who took part in the deliberation, but must also be promulgated to be considered a Decision, to wit:

[A] true decision of the Court is the decision signed by the Justices and duly promulgated. Before that decision is so signed and promulgated, there is no decision of the Court to speak of. The vote cast by a member of the Court after the deliberation is always understood to be subject to confirmation at the time he has to sign the decision that is to be promulgated. The vote is of no value if it is not thus confirmed by the Justice casting it. The purpose of this practice is apparent. Members of this Court, even after they have cast their votes, wish to preserve their freedom of action till the last moment when they have to sign the decision, so that they may take full advantage of what they may believe to be the best fruit of their most mature reflection and deliberation. In consonance with this practice, before a decision is signed and promulgated, all opinions and conclusions stated during and after the deliberation of the Court, remain in the breasts of the Justices, binding upon no one, not even upon the Justices themselves. Of course, they may serve for determining what the opinion of the majority provisionally is and for designating a member to prepare the decision of the Court, but in no way is that decision binding unless and until signed and promulgated.

We add that at any time before promulgation, the ponencia may be changed by the ponente. Indeed, if any member of the court who may have already signed it so desires, he may still withdraw his concurrence and register a qualification or dissent as long as the decision has not yet been promulgated. A promulgation signifies that on the date it was made the judge or judges who signed the decision continued to support it.

Thus, an unpromulgated decision is no decision at all. At the very least, they are part of the confidential internal deliberations of the Court which must not be released to the public. A decision becomes binding only after it is validly promulgated.^[15] Until such operative act occurs, there is really no decision to speak of, even if some or all of the Justices have already affixed their signatures thereto. During the intervening period from the time of signing until the promulgation of the decision, any one who took part in the deliberation and had signed the decision may, for a reason, validly withdraw one's vote, thereby preserving one's freedom of action.

In sum, we hold that Biraogo's Motion for Reconsideration with Prayer for Oral Argument must be denied. This Court did not err in ruling that the proper remedy of those who may assail Limkaichong's disqualification based on citizenship is to file before the HRET the proper petition at any time during her incumbency.

WHEREFORE, the Motion for Reconsideration with Prayer for Oral Argument filed by petitioner Louis C. Biraogo in G.R. No. 179120 is DENIED with FINALITY.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona, Carpio Morales, Chico-Nazario, Nachura, Leonardo-De Castro, and Bersamin, JJ., concur.

Brion, J., on official leave.

Velasco, Jr., J., dissents and adopt his dissent to the April 1, 2009.

[1] Sect. 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.

[2] *Frivaldo v. Commission on Elections*, 327 Phil. 521, 551 (1996).

[3] G.R. No. 120265, September 18, 1995, 248 SCRA 400, 429.

[4] *Ocampo v. House of Representatives Electoral Tribunal*, G.R. No. 158466, June 14, 2004, 432 SCRA 144, 149.

[5] *Rollo*, pp. 30-35. (Emphasis supplied)

[6] Sec. 13. Finality of Decisions or Resolutions. - x x x

(c) Unless a motion for reconsideration is seasonably filed, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days in Special actions and Special cases and after fifteen (15) days in all other actions or proceedings, following its promulgation.

[7] Sec. 2. Period for Filing Motions for Reconsideration. - A motion to reconsider a decision, resolution, order, or ruling of a Division shall be filed within five (5) days from the promulgation thereof. Such motion, if not pro forma, suspends the execution or implementation of the decision, resolution, order or ruling.

[8] *Vinzons-Chato v. Commission on Elections*, G.R. No. 172131, April 2, 2007, 520 SCRA 166, 179, citing *Aggabao v. Commission on Elections*, 449 SCRA 400, 404-405 (2005); *Guerrero v. Commission on Elections*, 391 Phil. 344, 352 (2000).

[9] Sec. 250. Election Contests for Batasang Pambansa, Regional, Provincial and City Offices. - A sworn petition contesting the election of any Member of the Batasang Pambansa or any regional, provincial or city official shall be filed with the Commission by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten days after the proclamation of the results of the election.

[10] *Vinzons-Chato v. Commission on Elections*, supra note 8, at 178, citing *Rasul v. Commission on Elections*, 371 Phil. 760, 766 (1999).

[11] *Lazatin v. Commission on Elections*, 241 Phil. 343, 344 (1988).

[12] *Supra* note 8, at 180.

[13] *Frivaldo v. Commission on Elections*, G.R. No. 87193, June 23, 1989, 174 SCRA 245, 255.

[14] 408 Phil. 511, 525-526 (2001). (Underscoring and emphasis supplied)

[15] *Jamil v. Commission on Elections*, G.R. No. 123648, December 15, 1997, 283 SCRA 349, 371.

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