

EN BANC

[G.R. No. 207105, November 10, 2015]

ARSENIO A. AGUSTIN, PETITIONER, VS. COMMISSION ON ELECTIONS AND SALVADOR S. PILLOS, RESPONDENTS.

DECISION

BERSAMIN, J.:

A person of dual citizenship is disqualified from running for a public office in the Philippines.

The Case

The petitioner seeks to annul and set aside the adverse resolution issued on April 23, 2013 in SPA No. 13-023 (DC),^[1] whereby the Commission on Elections (COMELEC) *En Banc* disposed:

WHEREFORE, premises considered, the Motion for Reconsideration of Petitioner Stewart D. De La Cruz in SPA No. 13-024 (DC) is denied for lack of merit. On the other hand, the Motion for Reconsideration of Petitioner Salvador S. Pillos in SPA No. 13-023 (DC) is granted; consequently, the Certificate of Candidacy of Respondent Arsenio A. Agustin is hereby CANCELLED and DENIED DUE COURSE.

SO ORDERED.^[2]

Antecedents

In 1997, the petitioner was naturalized as a citizen of the United States of America (USA).^[3] On October 5, 2012,^[4] he filed his certificate of candidacy (CoC) for the position of Mayor of the Municipality of Marcos, Ilocos Norte to be contested in the May 13, 2013 local elections.^[5] As the official candidate of the Nacionalista Party,^[6] he declared in his CoC that he was eligible for the office he was seeking to be elected to; that he was a natural born Filipino citizen; and that he had been a resident of the Municipality of Marcos, Ilocos Norte for 25 years.^[7]

On October 10, 2012, respondent Salvador S. Pillos, a rival mayoralty candidate, filed in the COMELEC a *Petition To Deny Due Course and/or to Cancel the Certificate of Candidacy of Arsenio A. Agustin*, docketed as SPA No. 13-023 (DC),^[8] alleging that the petitioner had made a material misrepresentation in his CoC by stating that he had been a resident of the Municipality of Marcos for 25 years despite having registered as a voter therein only on May 31, 2012. The petition stated the sole

ground thuswise:

THE DECLARATION UNDER OATH MADE BY THE RESPONDENT THAT HE IS ELIGIBLE FOR THE OFFICE OR SEEK TO BE ELECTED TO (sic) CONSTITUTES MATERIAL MISREPRESENTATION FOR THE TRUTH OF THE MATTER (sic) HE HAS NOT RESIDED AS REQUIRED BY LAW FOR A PERIOD OF ONE YEAR IN THE LOCALITY HE SEEKS TO BE ELECTED.^[9]

and prayed, viz.:

WHEREFORE, it is respectfully prayed before this Honorable Commission, to issue an order to immediately deny due course and or to cancel the certificate of candidacy of respondent Arsenio A. Agustin.

Other reliefs just and equitable are likewise prayed of (sic).^[10]

In his answer, the petitioner countered that the one-year requirement referred to residency, not to voter registration; that residency was not dependent on citizenship, such that his travel to Hawaii for business purposes did not violate the residency requirement pursuant to prevailing jurisprudence; and that as regards citizenship, he attached a copy of his *Affidavit of Renunciation of U.S./American Citizenship* executed on October 2, 2012.^[11]

On January 28, 2013, the COMELEC Second Division issued its omnibus resolution,^[12] pertinently holding:

As can be clearly gathered from the **Velasco** case, a candidate's status as a registered voter is a material fact which falls under the same classification as one's citizenship or residence. While they are under the same classification as referring to a candidate's qualification for elective office, the requirements are different. The requirement that a candidate must be a registered voter does not carry with it the requirement that he must be so one year before the elections because this refers to the residency qualification.

On this score, it could not be said that respondents falsely represented the length of their residence in the municipality simply because they became registered voters thereof only fairly recently. As far as registration as a voter is concerned, it should suffice that they are duly registered upon the filing of their COCs or within the period prescribed by law for such registration.

Anent petitioner['] allegations that respondents were unable to vote because they are residents of other countries, the records are bereft of any evidence that would substantiate this. It is a fundamental rule that he who alleges, not he who denies, must prove. Mere, petitioners have not adduced a single shred of competent evidence that respondents were

actually residents or citizens of other countries that is why they were unable to vote.

WHEREFORE, in view of the foregoing, the petitions are hereby DENIED for lack of merit.

SO ORDERED.^[13]

On February 12, 2013, Pillos moved for the reconsideration of the January 28, 2013 resolution with the COMELEC *En Banc*.^[14] He underscored in his motion that the certification issued by the Bureau of Immigration reflected that the petitioner had voluntarily declared in his travel documents that he was a citizen of the USA; that when he travelled to Hawaii, USA on October 6, 2012, he still used his USA passport despite his renunciation of his USA citizenship on October 2, 2012 and after filing his CoC on October 5, 2012, in which he declared that he was a resident of the Municipality of Marcos, Ilocos Norte; and that the petitioner's declaration of his eligibility in his CoC constituted material misrepresentation because of his failure to meet the citizenship and residency requirements.

The petitioner opposed the motion for reconsideration.^[15]

On April 23, 2013, the COMELEC *En Banc* issued its assailed resolution cancelling and denying due course to the petitioner's CoC, observing as follows:

Having admitted his dual citizenship, Agustin had the burden of proving through his evidence that he complied with the statutory requirements imposed upon dual citizens provided under Republic Act 9225, particularly Section 3 and 5(2) thereof, to wit:

x x x x

While Agustin presented a copy of his Affidavit of Renunciation, he failed to furnish this Commission a copy of his Oath of Allegiance. Noteworthy is the fact, that in Agustin's Affidavit of Renunciation, it was stated that his Oath of Allegiance is attached as Annex "B"; however, said attachment has not been made available for the perusal of this Commission. Having failed to sufficiently show that he complied with the provisions of RA 9225, Agustin's COC must be cancelled and/or denied due course. Consequently, the Motion for Reconsideration is only granted as against Respondent Agustin.^[16]

On May 3, 2013, the petitioner filed a *Verified Urgent Motion for Reconsideration with Leave of Court*.^[17] He attached thereto copies of the Order of Approval dated February 12, 2012^[18] and his Oath of Allegiance dated March 9, 2012,^[19] both issued by the Consulate General of the Philippines in Honolulu, Hawaii. He further attached certifications issued by Election Officers in Ilocos Norte attesting that the documents had been received by the COMELEC and retained in its files. He explained that the documents were not presented during the course of the

proceedings because the sole issue raised by Pillos' *Petition to Deny Due Course and/or to Cancel Certificate of Candidacy* had involved only his (petitioner) compliance with the one-year residency requirement.

Pillos submitted a *Motion for Issuance of Writ of Execution and Comment on the Verified Motion for Reconsideration with Leave of Court* on May 8, 2013,^[20] praying that a writ of execution be issued to implement the cancellation of the petitioner's COC.

On election day, May 13, 2013, the name of the petitioner remained in the ballot. He was later on proclaimed as the duly elected Municipal Mayor of Marcos, Ilocos Norte for obtaining 5,020 votes,^[21] the highest among the contending parties.

Sensing that the 30-day period within which a petition for *certiorari* should be filed in the Supreme Court was about to expire, the petitioner filed on May 24, 2013 an Urgent Motion to Withdraw Verified *Urgent Motion for Reconsideration with Leave of Court dated May 3, 2013*.^[22]

On May 28, 2013, the petitioner thus instituted this case, alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the COMELEC En Banc based on the following grounds:

- a. The assailed En Banc Resolution was promulgated in gross violation of Petitioner's guaranteed Constitutional Right to Due Process and to be informed of the facts and the law on which the same was based; and
- b. The grave erroneous appreciation of the facts, law, and the evidence of the case.^[23]

Meanwhile, on June 18, 2013, the COMELEC *En Banc*, pointing out that the filing of a motion for reconsideration of an *en banc* resolution was not allowed under Rule 13 of the 1993 COMELEC Rules of Procedure; and that, accordingly, the April 23, 2013 resolution was deemed final and executory pursuant to Section 8, paragraph 2 of COMELEC Resolution No. 9523, issued the writ of execution.^[24]

On July 16, 2013, the Court required the parties to observe the *status quo* prevailing before the issuance of the COMELEC *En Banc* resolution dated April 23, 2013.^[25]

Issues

The core issue involves the eligibility of the petitioner as a candidate for the position of Mayor of the Municipality of Marcos, Ilocos Norte.

A secondary issue concerns the propriety of Pillos' claim as the rightful occupant of the contested elective position.

Ruling

The petition for *certiorari* lacks merit.

The Court finds and declares that the petitioner made no material misrepresentation in his CoC; hence, there is no legal or factual basis for the cancellation of the CoC. Even so, he was disqualified to run as Mayor of the Municipality of Marcos, Ilocos Norte for being a dual citizen. With his disqualification having been determined and pronounced by final judgment before the elections, the votes cast in his favor should not be counted. Accordingly, his rival, respondent Pillos, should be proclaimed duly elected Mayor for obtaining the highest number of votes in the elections.

1.

Administrative due process was observed

Before anything more, let us deal with the petitioner's insistence that the COMELEC *En Banc* gravely abused its discretion in resolving Pillos' motion for reconsideration based on a ground that was neither the basis of nor raised in the *Petition To Deny Due Course and/or to Cancel the Certificate of Candidacy of Arsenio A. Agustin*; that the non-presentation of his Oath of Allegiance should not be fatal to his constitutional right to run for public office especially because the sole ground for Pillos' petition in the COMELEC had dealt only with the residency requirement; that Pillos could have included citizenship as a ground by the amendment of his petition, but he did not move for that purpose; that he duly complied with the requirements for the re-acquisition of his Philippine citizenship pursuant to Republic Act No. 9225, and the proof of the re-acquisition had been submitted to the Election Officers in Ilocos Norte; and that the COMELEC, by not at least holding a clarificatory hearing to ascertain and confirm such matters, violated his right to due process by denying to him the opportunity to prepare for his defense.

The petitioner's insistence lacks merit.

We note that the petitioner's citizenship came to the fore because he himself asserted his Philippine citizenship in his answer to Pillos' petition to cancel his CoC in order to bolster his allegation of compliance with the one-year residency requirement. As such, he could not credibly complain about being denied due process, especially considering that he had been able to file an opposition to Pillos' motion for reconsideration. It is worthy to state that the observance of due process in administrative proceedings does not always require or involve a trial-type proceeding, for the demand of due process is also met whenever a person, being notified, is afforded the opportunity to explain or defend himself. Also, due process is satisfied by giving the opportunity to seek the reconsideration of the action or ruling complained of.^[26] The rule is the same in election cases.^[27]

2.

The petitioner filed a valid CoC, but the use of his USA passport after his renunciation of foreign citizenship rendered him disqualified from continuing as a mayoralty candidate

A valid CoC arises upon the timely filing of 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. The valid CoC renders the person making the